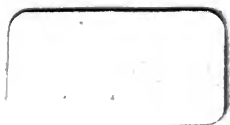




Officers and members

Vermont Bar Association, Vermont
Bar Association. Meeting





King's by A.H. Hanlon

John Maitland

VERMONT
BAR ASSOCIATION.

CONSTITUTION, MEMBERS, PROCEEDINGS,
PAPERS, AND ADDRESSES.

1886.

VOL. II. No. 1.

BARRE:
THOS. H. CAVE, BOOK AND JOB PRINTER.
1887.

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CONSTITUTION.

I.

NAME AND OBJECT.

This association shall be called "THE VERMONT BAR ASSOCIATION." Its object is to cultivate the science of jurisprudence ; to promote reform in the law ; to facilitate the administration of justice ; to elevate the standard of the legal profession ; to cherish a fraternal spirit among its members, and to perpetuate their memory.

II.

MEMBERS.

All members of the bar of this state who have received the circular of invitation to this meeting, and have attended the meeting, may become members of the association by signature of the roll and payment of the admission fee. Any member of the bar of the supreme court of this state in good standing may become a member of the association, if nominated by the committee on admissions and elected by the association, at any regular or adjourned meeting ; such election shall be by ballot, and ten negative ballots, or one-fourth the whole number cast, shall be sufficient to defeat an election ; provided, that such election shall not have effect until the person elected shall sign the roll and pay to the treasurer his admission fee, as provided in the constitution, nor unless he so signs and pays before the termination of the annual meeting held next after such election. A member who neglects for the space of three years to pay dues which accrue against him while he resides in this state, shall

thereupon cease to be a member of this association ; but no dues shall accrue against a member while he resides without this state. Judges of the United States courts in this state and the judges of the supreme court shall be honorary members of the association, and other persons may be elected honorary members.

III.

OFFICERS.

The officers of the association shall be a president, three vice presidents, a secretary, treasurer, and a board of managers, consisting of five, of whom three shall be a quorum.

The president, vice presidents, secretary, treasurer, and board of managers shall be elected at the first and at each succeeding annual meeting, upon the nomination of a committee appointed for that purpose, and shall hold their offices for one year, and until their successors are elected ; provided, that the same person shall not be elected president two years successively.

IV.

PRESIDENT.

The president, or, in his absence, one of the vice presidents, shall preside at all meetings of the association.

The president shall be *ex officio* a member and chairman of the board of managers, and it shall be his duty to deliver before the association an address at its annual meeting.

V.

SECRETARY.

The secretary shall keep a record of the proceedings of all meetings of the association, and, with the concurrence of the president, conduct its correspondence and discharge such other duties as shall be required of him by the association.

VI.

TREASURER.

The treasurer shall collect, and, by order of the managers, disburse the moneys of the association, and discharge such other duties as shall be required of him, and shall give such security for the faithful performance of his duties, as the managers shall require.

VII.

BOARD OF MANAGERS.

This board shall manage the affairs of the association, subject to the provisions of the constitution, and may fill vacancies in office. It shall also be its duty to examine and report upon the account of the treasurer.

VIII.

STANDING COMMITTEES.

The following standing committees shall be appointed by the president, on the recommendation of the managers: a committee on admissions, a committee on professional conduct, a committee on jurisprudence and law reform, and a committee on legal history and biography,

IX.

COMMITTEE ON ADMISSIONS.

The committee on admissions shall consist of one member from each county, whose duty it shall be to receive and pass upon applications for admission, and to nominate to the association such applicants as they may find worthy.

The proceedings of this committee shall be deemed confidential.

X.

COMMITTEE ON PROFESSIONAL CONDUCT.

The committee on professional conduct shall consist of three members, to whom shall be referred all complaints against mem-

bers of the association, and also such charges against other members of the profession as are claimed to require judicial action, and whose duty it shall be to examine and report to the association.

XI.

COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

The committee on jurisprudence and law reform shall consist of three members, to whom shall be referred all proposed changes in law or practice ; and it shall be their duty to report thereon, and also to report to the annual meetings of the association such changes or modifications in existing law or practice, or other matters affecting the interests of the profession, as in their judgment ought to be proposed by the association.

XII.

COMMITTEE ON LEGAL HISTORY AND BIOGRAPHY.

The committee on legal history and biography shall consist of three members, whose duty it shall be to provide for the preservation and perpetuation, by suitable written or printed memorials, of the records of the lives and characters of distinguished deceased members of the bar of the state, and of such important events in the legal history of the state as the association may deem proper.

XIII.

EXPENDITURES.

No money belonging to the association shall be expended, and no liability shall be incurred, except under the order and direction of the managers.

XIV.

MEETINGS.

There shall be an annual meeting of the association held at Montpelier, commencing on the evening of the first day of the general term of the supreme court, or, in the absence of such

term, on the evening of the fourth Tuesday in October ; and such adjourned or special meetings as the association or the managers shall determine.

XV.

FEES AND DUES.

The admission fee shall in all cases be three dollars, to be paid on signing the constitution.

The annual dues of members, after the year of their admission, shall be two dollars, and shall be payable to the treasurer in advance, at or before the annual meetings.

Honorary members shall be exempt from the payment of fees and dues.

XVI.

EXPULSION.

Any member may be suspended or expelled for misconduct in his relations to the association, or in his profession, by vote of the association, on the recommendation of the committee on professional conduct.

XVII.

EXERCISES.

It shall be the duty of the managers to make arrangements for the proceedings of annual and special meetings, to procure, by invitation or otherwise, of the association or others, the delivery at such meetings of suitable addresses, essays or papers, or biographical or historical sketches ; and to provide for a dinner for the association, in connection with the annual meeting.

XVIII.

AMENDMENTS.

The constitution shall go into effect immediately, and can be amended only by a two-thirds vote of the members present at a meeting of the association, after notice of the proposed amendment in writing shall have been given at the next previous meeting, and in the notices of the meeting given by the secretary.

MEMBERS,

WITH RESIDENCE, AND COUNTY AND TERM OF ADMISSION TO BAR.

ADAMS, HENRY C.	St. Albans.	Franklin, December, 1854.
ALFRED, FRANK E.	Newport.	Franklin, September, 1876.
ALLBE, ALBERT M.	Springfield.	Windham, April, 1843.
BAKER, JOEL C.	Rutland.	Rutland, March, 1862.
BALDWIN, F. W.	Barton.	Lamoille, December, 1872.
BALLARD, GEORGE A.	Fairfax.	Franklin, September, 1861.
BALLARD, HENRY	Burlington.	{ Albany, N. Y., May, 1863.
		{ Chittenden, Sept., 1863.
BARRETT, JAMES	Rutland.	Windsor, December, 1840.
BARRETT, JAMES C.*	Rutland.	Windsor, May, 1877.
BARRETT, RUSH P.	Rutland.	Windsor, December, 1878.
BATES, HENRY C.	St. Johnsbury.	{ Coos, N. H., Nov., 1868.
		{ Orleans, June, 1866.
BATCHELDER, JAMES K.	Arlington.	Bennington, June, 1866.
BATCHELDER, WILLIAM	Windsor.	Windsor, May, 1872.
BELDEN, HENRY C.	Min'apolis, Minn.	Caledonia, December, 1863.
BINGHAM, M. A.	Essex Junction.	Lamoille, May, 1868.
BISBEE, EDWARD W.	Barre.	Washington, Sept. 1871.
BLODGETT, HARRY	St. Johnsbury.	Caledonia, June, 1873.
BOLLES, FRANCIS A.	Bellows Falls.	Windham, April, 1872.
BOYCE, OSMAN B.	Barre.	{ Albany, N. Y., March, 1871.
		{ Essex, September, 1871.
BOYCE, WILLIAM A.	Barre.	Washington, March, 1869.
BOYDEN, NELSON L.	Randolph.	Orange, June, 1865.
BRIGGS, GEORGE	Brandon.	Rutland, September, 1868.
BROMLEY, JEROME B.	Castleton.	Rutland, September, 1849.
BROWNELL, C. W., Jr.	Burlington.	Chittenden, Sept., 1872.
BUCK, MYRON	St. Albans.	Franklin, April, 1854.
BURKE, JOHN C.	Albany.	Orleans.
BURLESON, GEO. W.	East Fairfield.	Franklin, September, 1875.

*Deceased.

BURNAP, WILDER L.	Burlington.	Chittenden, Sept., 1866.
BUTLER, F. M.	Rutland.	Windham, March, 1877.
BUTTERFIELD, O. E.	Wilmington.	Windham, April, 1867.
CAHOON, GEORGE W.	Lyndon.	Caledonia, June, 1855.
CARLETON, HIRAM	Montpelier.	Washington, Sept., 1865.
CARR, JOHN L.	Barton.	Orleans, Sept., 1878.
CHAMBERLIN, PHINEAS*	Bradford.	Orange, June, 1877.
CLARKE, CORNELIUS W.	Chelsea.	Orange, January, 1849.
CLARK, OSMAN D.	Montpelier.	Washington, March, 1879.
CROSS, ALBERT P.	St. Albans.	Franklin, April, 1869.
DALE, GEORGE N.	Island Pond.	Washington, March, 1856.
DANA, CHARLES S.	St. Johnsbury.	Caledonia, December, 1840.
DARLING, J. K.	Chelsea.	Orange, June, 1874.
DAVENPORT, CHARLES N.*	Brattleboro.	Windham, April, 1854.
DAVIS, GILBERT A.	Windsor.	Windsor, May, 1859.
DAVIS, PARK	Albany, N. Y.	Windham, September, 1864.
DEAVITT, THOS. J.	Montpelier.	Washington, March, 1866.
DENISON, JOSEPH D.	Royalton.	Windsor, May, 1869.
DICKERMAN, J. E.	Newport.	Orleans, June, 1854.
DICKEY, ASA M.	Bradford.	Orange, June, 1845.
DICKEY, GEORGE A.	Bradford.	Caledonia, June, 1877.
DILLINGHAM, PAUL	Waterbury.	Washington, March, 1823.
DILLINGHAM, WILLIAM P.	Waterbury.	Washington, Sept., 1866.
DUNNETT, Alexander	St. Johnsbury.	Orange, June, 1877.
DUNTON, WALTER C.	Rutland.	Rutland, September, 1858.
DURANT, LUTHER L.	Montpelier.	Washington, Nov., 1850.
EDDY, CHAS. B.	Bellows Falls.	Windham, April, 1858.
EDDY, JONATHAN G.	Brattleboro.	Windham, April, 1869.
EDMUNDS, GEORGE F.	Burlington.	Chittenden, March, 1849.
EDSON, H. G.	St. Albans.	* Franklin, September, 1844.
EDWARDS, JOHN L.	Newport.	Orleans, June, 1843.
FARNHAM, ROSWELL	Bradford.	Orange, January, 1857.
FARRINGTON, WILLARD	St. Albans.	Franklin, September, 1862.
FAY, ALLAND G.	Montpelier.	General Term, 1884.
FIELD, HENRY K.	Oakland, Cal.	Windham, September, 1871.
FIFIELD, B. F.	Montpelier.	Washington, March, 1858.
FRENCH, WARREN C.	Woodstock.	Windsor, May, 1844.
GARDNER, ABRAHAM B. *	Bennington.	Rutland, April, 1844.
GARY, F. E. H.	Montpelier.	Washington, Sept., 1882.
GLEASON, C. J.	Montpelier.	Washington, Sept., 1858.
GLEASON, S. M.	Thetford Center.	Orange, December, 1861.
GLEED, PHILIP K.	Morrisville.	Lamoille, December, 1859.
GORDON, TRUMAN R.	Montpelier.	Washington, Sept., 1877.

GROUT, THEOPHILUS	Newport.	Orleans, September, 1871.
GROUT, WILLIAM W.	Barton.	Caledonia, December, 1857.
HALL, ALFRED A.	St. Albans.	Franklin, April, 1873.
HARMAN, GEORGE W.	Bennington.	Rutland, Sept., 1833.
HARMAN, HENRY A.	Rutland.	Bennington, Dec., 1871.
HARVEY, O. F.	West Concord.	Iowa, in 1857.
HARVEY, RONEY M.	Topsham.	Orange, December, 1870.
HASKINS, KITTREDGE	Brattleboro.	Windham, April, 1858.
HEATH, CHARLES H.	Montpelier.	Lamoille, December, 1859.
HEBARD, SALMON B.	Chelsea.	Orange, December, 1861.
HEYWOOD, HENRY	Lancaster, N. H.	Essex, March, 1860.
HOGAN, CHARLES P.	Sheldon.	Lamoille, May, 1868.
HOWE, CHARLES L.	Rutland.	Rutland, March, 1882.
HUSE, HIRAM A.	Montpelier.	{ Albany, N. Y., May, 1867. { Orange, June, 1869.
IDE, HENRY C.	St. Johnsbury.	Caledonia, December, 1870.
JOHNSON, WILLIAM E.	Woodstock.	Windsor, May, 1865.
KELTON, OTIS N.	Montgomery.	Franklin, September, 1877.
KEMP, HARLAN W.	Montpelier.	Washington, Sept., 1880.
KENDALL, P. REDFIELD	Rutland.	Orleans, September, 1873.
KENFIELD, W. H. H.	Hyde Park.	Lamoille, December, 1863.
LAMSON, JOSEPH P.	Cabot.	Lamoille, April, 1860.
LAWRENCE, L. L.*	Burlington.	Chittenden, April, 1866.
LAWRENCE, GEORGE E.	Rutland.	Addison, June, 1868.
LESLIE, CHAS. BRIGHAM	Wells River.	Orange, June, 1853.
LIVINGSTON, JOSIAH O.	Montpelier.	Lamoille, May, 1861.
LUCIA, J. H.	Montpelier.	Addison, June, 1868.
MARTIN, JAMES L.	Brattleboro.	{ Albany, N. Y., May, 1869. { Bennington, June, 1869.
MARTIN, JOSEPH G.	*Manchester.	Windham, April, 1874.
MAY, ELISHA	St. Johnsbury.	Caledonia, December, 1868.
MCGETTRICK, F. W.	St. Albans.	
MCFEETERS, EMMETT	Enosburgh Falls.	Franklin, September, 1880.
MELDON, PAT. M.	Rutland.	Rutland, September, 1882.
NICHOLS, ALBRO F.	West Concord.	Caledonia, June, 1873.
NOBLE, GUY C.	St. Albans.	Franklin, September, 1861.
ORMSBEE, E. J.	Brandon.	Rutland, March, 1861.
OVIATT, HENRY	Montpelier.	Washington, March, 1875.
PALMER, EDWIN F.	Waterbury.	Washington, Sept., 1864.
PAUL, NORMAN	Woodstock.	Windsor, December, 1862.
PECKETT, JOHN B. Jr.,	Bradford.	Orange, June, 1882.
PHELPS, E. J.	Burlington.	Addison, December, 1843.
PINGREE, SAMUEL E.	Hartford.	Windsor, December, 1859.

PITKIN, CLARENCE H.	Montpelier.	Washington, March, 1872.
PLUMLEY, FRANK	Northfield.	Lamoille, May, 1869.
POLAND, LUKE P.*	Waterville.	Lamoille, December, 1836.
PORTER, CHARLES W.	Montpelier.	Washington, Sept., 1874.
POWELL, E. HENRY	Richford.	Franklin, September, 1866.
PROCTOR, REDFIELD	Rutland.	Windsor, May, 1860.
PROUT, JOHN	Rutland.	Addison, June, 1839.
READ, LAVANT M.	Bellows Falls.	Windham, April, 1869.
REDINGTON, LYMAN W.	Rutland.	{ Milwaukee, Wis., 1871.
		{ Rutland, September, 1873.
ROBERTS, DANIEL	Burlington.	Rutland, September, 1832.
ROBERTS, ROBERT	Burlington.	Chittenden, Sept., 1871.
ROGERS, D. ALLEN*	Wells River.	Coos, N. H., May, 1854.
ROWELL, JOHN W.	West Randolph.	Orange, June, 1858.
ROWELL, WILLIAM K.	North Troy.	Franklin, September, 1870.
ROYCE, HEMAN S.	St. Albans.	Franklin, April, 1844.
RUSSELL, J. W.	Burlington.	Chittenden, Sept., 1871.
RUSTEDT, H. E.	Richford.	Franklin, April, 1873.
SAFFORD, ALFRED G.	Burlington.	Franklin, September, 1857.
SEAVER, THOMAS O.	Woodstock.	Windsor, December, 1864.
SENER, JOHN H.	Montpelier.	Washington, March, 1879.
SHAW, WILLIAM G.	Burlington.	Chittenden, March, 1853.
SHURTLEFF, STEPHEN C.	Montpelier.	Washington, March, 1863.
SMALLEY, B. B.	Burlington.	Chittenden, Sept., 1863.
SMILIE, M. E.	Montpelier.	Washington, March, 1866.
SMITH, E. CURTIS	St. Albans.	Franklin, September, 1877.
SMITH, EDGAR W.	Wells River.	Orange, December, 1872.
SMITH, F. WALWORTH	Leadville, Col.	Franklin, September, 1877.
SMITH, HENRY H.	Rutland.	Rutland, September, 1858.
SMITH, WARREN H.	Rutland.	Orange, June, 1843.
SMITH, WALTER P.	St. Johnsbury.	Lamoille, May, 1869.
STANTON, ZED. S.	Roxbury.	Washington, March, 1880.
START, HENRY R.	St. Albans.	Franklin, April, 1867.
STEVENS, HIRAM F.	Min'apolis, Minn.	Franklin, September, 1874.
STEWART, JOHN W.	Middlebury.	Addison, December, 1856.
STEWART, W. D.	Bakersfield.	Franklin, April, 1872.
STICKNEY, WILLIAM W.	Ludlow.	Windsor, December, 1878.
STOW, GEORGE L.	Chelsea.	Chittenden, Sept., 1875.
SWINGTON, F. G.	Rutland.	Rutland, March, 1878.
TAFT, ELIHU B.	Burlington.	Chittenden, April, 1873.
TENNEY, A. D.	St. Albans.	Franklin, September, 1871.
THOMPSON, L. H.	Irasburgh.	Orleans, February, 1871.
TYLER, JAMES M.	Brattleboro.	Windham, September, 1860.

TYLER, MILTON R.	Rochester, Minn.	Franklin, September, 1860.
VEAZEY, W. G.	Rutland.	{ Albany, N. Y., June, 1860.
		{ Windsor, December, 1860.
WALES, TORREY E.	Burlington.	Chittenden, March, 1845.
WALKER, ALDACE F.	Rutland.	{ New York City, May, 1867.
		{ Rutland, September, 1873.
WALKER, WILLIAM H.	Ludlow.	Windsor, December, 1861.
WATERMAN, ELEAZER L.	Jamaica.	Windham, September, 1863.
WATSON, JOHN H.	Bradford.	Orange, December, 1877.
WILDS, CHAS. M.	Middlebury.	Addison, June, 1880.
WILBUR, L. F.	Burlington.	Lamoille, December, 1856.
WILLARD, ASHTON R.	Montpelier.	Washington, Mar., 1882.
WILSON, JAMES J.	Bethel.	Windsor, May, 1858.
WILSON, WILLIAM D.	St. Albans.	Franklin, June, 1857.
WING, GEORGE W.	Montpelier.	Washington, March, 1868.
WING, JOHN G.	Montpelier.	Washington, Sept., 1880.
WING, JOSEPH A.	Montpelier.	Washington, April, 1836.
WOODBIDGE, F. E.	Vergennes.	Addison, December, 1843.
YOUNG, JOHN	Newport.	Orleans, June, 1862.

HONORARY MEMBERS.

THE JUDGES OF THE UNITED STATES COURTS IN THIS STATE.

THE JUDGES OF THE SUPREME COURT.

BENNETT, EDMUND H.	- - - - - *	Tauton, Mass.
EVARTS, WILLIAM M.	- - - - -	New York City.
HALL, HILAND	- - - - -	Bennington,
POMEROY, JOHN M.*	- - - - -	Burlington.
STOUGHTON, E. H.*	- - - - -	New York City.

*Deceased.

OFFICERS AND COMMITTEES.—1886-7.

President,

CHARLES H. HEATH, Montpelier.

Vice Presidents,

HENRY C. BATES, St. Johnsbury.

JOEL C. BAKER, Rutland.

GUY C. NOBLE, St. Albans.

Secretary,

GEORGE W. WING, Montpelier.

Treasurer,

HIRAM CARLETON, Montpelier.

Managers,

CHARLES H. HEATH, *ex officio*, Montpelier.

STEPHEN C. SHURTLEFF, Montpelier.

JOHN H. WATSON, Bradford.

HENRY BALLARD, Burlington.

JAMES K. BATCHELDER, Arlington.

COMMITTEE ON ADMISSIONS.

Addison County.....	CHARLES M. WILDS, Middlebury.
Bennington County.....	GEORGE W. HARMAN, Bennington.
Caledonia County.....	ELISHA MAY, St. Johnsbury.
Chittenden County.....	ROBERT ROBERTS, Burlington.
Essex County.....	Z. M. MANSURE, Island Pond.
Franklin County.....	A. P. CROSS, St. Albans.
Lamoille County.....	HENRY C. FISK, Morrisville.
Orange County.....	SALMON B. HEBARD, Chelsea.
Orleans County.....	JOHN C. BURKE, Newport.
Rutland County.....	P. R. KENDALL, Rutland.
Washington County.....	ZED. S. STANTON, Roxbury.
Windham County.....	JAMES L. MARTIN, Brattleboro.
Windsor County.....	WM. W. STICKNEY, Ludlow.

VERMONT BAR ASSOCIATION.

COMMITTEE ON PROFESSIONAL CONDUCT.

PHILIP K. GLEED, Morrisville; E. J. ORMSBEE, Brandon;
CHARLES B. EDDY, Bellows Falls.

COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

DANIEL ROBERTS, Burlington; L. H. THOMPSON, Irasburgh;
JAMES C. BARRETT, Rutland.

COMMITTEE ON LEGAL HISTORY AND BIOGRAPHY.

ASA M. DICKEY, Bradford; HENRY A. HARMAN, Rutland;
SENECA HAZELTON, Burlington.

NEW MEMBERS.

JUDSON E. CUSHMAN..... West Randolph.
GEORGE B. SPENCER..... Rutland.
ISAAC N. CHASE..... East Fairfield.
C. A. PROUTY Newport.
JOHN G. FOSTER..... Derby Line.
GEO. W. KENNEDY..... Waterbury.
WM. B. C. STICKNEY..... Bethel.
SENECA HAZELTON..... Burlington.
H. C. FISK..... Morrisville.
F. D. HALE..... Lunenburg.
E. W. STODDARD..... Brattleboro.
GEO. W. WALES..... Burlington.
J. W. PAGE..... Jeffersonville.
Z. M. MANSUR..... Island Pond.

TREASURER'S REPORT.

HIRAM CARLETON, *Treasurer*,
In Account with the VERMONT BAR ASSOCIATION:

1885.	DR.		
Oct. 28.	To deposit in Burlington Savings Bank.....	\$311 40	
	deposit in Mont. Sav. Bank & Trust Co..	355 04	
	cash received for dues and admission fees,	271 00	
	interest on deposits.....	24 18	
			\$961 62
1885.	CR.		
Oct. 28.	By paid Geo. W. Wing, bill printing	\$11 21	
Nov.	Pavilion, bill annual banquet.....	118 00	
1886.			
Jan. 27.	D. W. Dixon, bill printing.....	1 00	
Oct. 23.	postal cards and printing	2 75	
	printing notices	2 25	
	stamped envelopes.....	56	
26.	printing Report.....	74 10	
	printing tickets.....	75	
27.	balance in Burlington Savings Bank	323 97	
	balance in Mont. Sav. Bank & Trust Co..	427 03	
			\$961 62

ASSETS, OCTOBER 27, 1886.

Cash deposited in Burlington Savings Bank to the credit of Hiram Carleton, Treasurer, book 9943.....	\$323 97
Cash deposited in Montpelier Savings Bank & Trust Co., to the credit of Hiram Carleton, Treasurer, book 5442	427 03
Total Assets.....	\$751 00

SUMMARY OF PROCEEDINGS.

The association met at the Court House, in Montpelier, on October 26th, 1886, at 7.30 P. M., pursuant to notice from the secretary, and adjourned without day on the 4th day of November, at 10 o'clock, A. M.

The association was called to order by President Dale, and the records of the previous meeting were read and approved. The president then delivered his address, which was followed by a memorial sketch of Gov. John Mattocks, by O. P. Chandler.

The Committee on Jurisprudence and Law Reform, through Daniel Roberts, submitted a report, which was accepted.

Daniel Roberts also for the Special Committee on Mesne and Final Process, submitted a report, recommending its adoption by the association, and the report being in the form of a bill, that its passage be urged upon the general assembly. On motion of Mr. Walker, the matter was referred back to the committee, with directions to report more fully at an adjourned meeting to be held at the Pavilion. On motion, Messrs. Walker, Heath and Prouty were appointed a committee to consider the time of holding the sessions of the supreme court.

Mr. Stanton, for the Committee on Admissions, submitted a report, which was accepted. Mr. Heath moved the thanks of the association to President Dale and Mr. Chandler. Carried. Mr. Durant moved that a committee of seven be appointed to nominate officers for the ensuing year. Carried.

The treasurer submitted his annual report, showing a balance on hand of \$751.

On motion of W. C. French, the president, secretary and treasurer were constituted a Committee on Printing.

Mr. Baker called up the report of the Committee on Jurisprudence and Law Reform, and the same being read seriatim, was

adopted, except the sixth provision, which was ordered to lie. (See Appendix.)

On motion of Mr. Thompson, the association requested the supreme court to amend rule 13 of the supreme court by adding thereto the following: "Petitions for writs of quo warranto, mandamus and prohibition, transferred to the general term, shall be entered first on the docket, and be first heard unless otherwise ordered." This action the secretary was instructed to report to the court then in session.

The draft of an act presented by the special committee as a report on the subject of regulating mesne and final process in civil actions, and providing remedies supplemental to execution, having been printed and distributed, was taken up as the special order, and after discussion, on motion of Mr. Noble, the secretary was directed to send a copy to each member of the association, with notice that it will come up for approval, and that the matter be deferred to the next annual meeting. On motion of Mr. Noble, amended by Mr. Thompson, the chair appointed a committee of one from each county to consult with the bar in his county, and be prepared to report at the next regular meeting of the association, upon the matter set forth in the report of such special committee.

Mr. J. C. Barrett moved that the applicants just examined be admitted to the banquet as the guests of the associations. Carried. Mr. Dunnett, for the Committee on Admissions, made an additional report, which was accepted. The Committee on Nominations for the ensuing year made a report. Accepted. The president appointed his list of standing committees, also a special committee under the motion of Mr. Noble.

Mr. Walker, for the committee appointed to take into consideration the time of the sessions of the supreme court, submitted a report. On motion of Mr. Boyden, the report was ordered to be printed, and a copy to be given to each member of the general assembly. This report and other matters of interest will be found in the Appendix.

THE PRESIDENT'S ADDRESS.

Gentlemen of the Association :

An address at this time would be more constitutional than essential. The constitution declares that one shall be made, but to that declaration I propose to plead in avoidance. The world is filled with essays upon every conceivable legal subject ; the brightest intellects and the richest learning in the land are constantly employed about them so that the supply far exceeds all our wants. The argument of the plea is, that therefore it would be idle to imperil the interest in this occasion with any bungling imitation. Rather let me occupy the few moments it may be proper for me to address you, in talking about our past, present and future ; about our association as involving our work and our lives, hopes and aspirations. Very early in the history of our state its people began to study primitive institutions and how the various departments of society could be best organized to accomplish social and political ends.

In 1778 they began to legislate by declaring the laws " As they stand in the Connecticut law book, and in defect of those laws the plain word of God ascertained in the scriptures, to be the law of the land until the legislature should have time to digest and enact a code adapted to the condition of the country." This they did in 1779, and the people were directed by good old Gov. Chittenden " to take notice and govern themselves accordingly." As to the fit adaptation of legislation in these early days we may not judge, for we cannot now be familiar with the circumstances, wants or temper of the people of those times. But this we do know, that the laws soon expressed and represented the stern virtues of a people who accomplished a

most thorough organization of the state. The various departments of society in the very infancy of the state began to form organizations, the birth and development of which would be most interesting to detail if time would permit. Suffice it to say that religion, education, manufacturing and trading interests, other professions, artisans and laborers, as well as the literary and social elements of society, were embraced in some form of organization which were models of decorum, system and enterprise. Singularly our profession remained almost alone a nomadic class. But in spite of that, our state in its first century was remarkable for individual enterprise in the science and practice of the law. It produced many eminent lawyers whose reputation and influence were not limited by state lines; and considering the brilliant school of advocates which arose at this time, it may come to be regarded as Vermont's golden legal age, at least in respect of forensic oratory. But amid all this activity, which stirred to life the noblest emotions and energies of individuals—there was no unity—no universality of sentiment throughout the bar of the state—no common intercourse; and no uniformity of practice. It is true that ill-formed county organizations sprang up, but they had no soldariety nor life nor progress. These little groups seldom mingled with the bar of the state generally. The lawyer's horizon was too much the boundaries of his own county. The tendency of this condition to contract every element of his nature—to deprive him of any common legal atmosphere or friction to brighten him, and so he lingered and wandered in a languid, dreamy atmosphere, covered with rust, and dust, and thistle-down. Besides, this division of the bar into a dozen or more isolated communities without system, gave rise to provincialisms. Courts were governed by endemic rules; and nearly everything relating to practice was governed by local custom, which reluctantly yielded to even the fixed laws themselves. The practitioner out of his own county was a stranger, governed by unfamiliar rules. And when the judge carried the rules of his own county into another, then all were strangers. But worse than all, our profession was stamped

with one of the most marked characteristics of a barbarous people. *It had no history.* We knew of the lives and struggles of our great exemplars only by broken tradition. The grandeur and sublimity of our work had been hidden by nearly a century of barbarous neglect. We had the faint lines of county organizations, but by no less indicia are savage tribes distinguished. At last to the lawyer this isolated hermitical life became intolerably oppressive. The more progressive sighed for a broader field, more congenial atmosphere and generous action. They saw that a lawyer ought not to live and indulge exclusively in his own mentality. He cannot, like the poet, dwell in his own imaginations; nor, like the philosopher, in the study of the deep mysteries of his own philosophy. His intercourse with his fellows must be intimate, extensive and constant. He must be identified with the varying changes in legal decisions and sentiments.

With this view a few of our leading lawyers (whose constant presence in your minds makes mention of any names unnecessary,) called to life this organization, which has already established system and uniformity of practice throughout the state, and made every county a familiar apartment in the home of every lawyer in Vermont. But who are we thus associated, and what are our works and purposes? A lawyer, by grumblers, is supposed to be a man who works for personal results and benefits, and consequently gets few grateful returns from the general public; one who is exposed to all kinds of storms, and often has to row against the most agreeable sentiments; who labors with little hope of a posthumous fame; whose reputation, however successful he may be, with rare exceptions like Choate or Webster, seldom extends beyond his works or survives his grave. It is complained that though while living he is fairly remunerated for his services, and acquires a position and a certain kind of direct influence; that, dead, his name only lives a little while in a few dim and imperfect anecdotes and illustrations of his genius, which float a brief space in the legal atmosphere, and then cease to be repeated, and finally are forgotten. It is not

charged that this grows out of any fault in the work, but out of the nature of forensic lives and occupations. It is complained that the work of a lawyer is local in its interests and results ; that he has to exercise his highest learning and logic for the attainment of exclusively personal ends, and to work many times when "a' his views may come to naught where ev'ry nerve is strained." With the occasion of his happiest effort it is said its brilliancy passes away and gradually fades into everlasting forgetfulness. This is true. For as well as you and I are accustomed to remember (and it is a rich memory, too,) the thrilling tones, the tender pathos, the stirring voice methodically arranging facts and arguments which characterize the fine geniuses among us, they die away with our memory. These sounds are to us the music of our lives, the notes of which would be softened and mellowed by keeping. But they will not keep ; for, when we die, they are "as a tale that is told." But this is incidental to all lives and occupations. It is admitted that on the bench and in the national councils our number become distinguished, but it is urged that it is their judicial fame or that of a statesman and not of a lawyer. Whatever consideration these lamentations merit, it cannot be successfully asserted that a legal atmosphere is not one of the most congenial and healthy ever enjoyed. Who of you would not be content to forego any other ambition if thereby you could secure the privilege of living in everlasting study and contemplation of the pure principles of law arranged among the highest orders of art and science ? But it is not quite practicable to erect an imaginative temple where, free from gross contact with the world, we may worship the ideal beauties of the law in all its shifting kaleidoscopic variations and distinctive shades. Besides, there would be no zest in such an existence. It would be too idle and useless. It would be void from want of subsistence. But if we cannot practice law in the abstract in ideal perfection, it does not follow that we must necessarily drink in or sympathize with the bad passions or animosities with which parties are filled. To cultivate in the minds of clients a respect for the law is as important

as is its use in vindicating their causes. And I am not quite certain that our democratic prejudice against the court dress and emblems of authority borne by court officers, is entirely well founded.

The sheriff with a naked sword is a forcible reminder that the law contains a physical force, the suggestion of which tends to avoid the occasion for its actual use. A distinguishing and appropriate dress worn by the members of the court is highly emblematical of the dignity, authority, and the high and sacred offices of the wearers. But, passing externals, is our work entirely organized and systematic? It cannot be otherwise, in the fallibility of human inventions, than that many errors and abuses should exist in, and creep into, any system of legal practice, especially one of long standing. And so we may look upon the old English system under which, from the time of William Rufus until the fourteenth century, all lawyers were clergymen; and then under Edward I., who decreed that all lawyers should come from the laity, as irregular and somewhat whimsical. Our people may look with jealousy upon such a powerful and privileged body as the lawyers were under James I. And as illustrious as the four inns of courts of London have become as the homes of scholars and fountains of law, abuses may flow from them sufficient to occupy the pen of a Dickens a long time in describing them. The aristocratic features of the English system would not be pleasing to the American mind, nor would their system of subdivision of work be at all adapted to our condition. But what is to be said in vindication of that profession in a country where it has lived and worked with wonderful results, and produced the most learned lawyers and considerable men for one hundred years, with scarcely a shadow of organization or control, and whose members, so far as any forensic restraints are concerned, have been going about all these years as a sort of gorilla lawyers? What restraints peculiar to the profession, or safeguards, or standards, except the personal honor of the members, have we had until quite recently, and since the formation of this association.

This has brought unjust reproach upon the profession and really worthy men in contact with it. No more pat application can be made of the maxim that "familiarity breeds contempt," than when applied to a profession whose members go among idlers and *quidnuncs* to indulge in the discussion of legal propositions, and suffer themselves to be flattered and catechised and experimented upon by street champertors, and thus through the lowest vanity to show their learning, transferring the consideration of legal differences from the respectable forum to which they belong to senseless throngs of idlers. Such a class, hardly tadpoles in development, are seldom identified with any fidelity or with any honest interest. The contempt which this letting down of the profession has brought upon it is shared in a degree by good and bad alike. Some of this class have come among us to make cheap merchandise of the confidence of the people. They formerly got very easily by an examination which was absolutely no protection against imposters, and only served to falsely advise honest but disqualified candidates that they were fit to be enrolled, which generally put an end to their studies. Happily the bar of our state is applying an effectual remedy for this evil. But just so long as the door is open to men who come in after a cloak for speculation and trickery, or just so long as able men meet them at the entrance after they are excluded, and receive and carry forward their fraudulent work, and so breed and patronize legal jackals, just so long will a profession, which from its nature contains and practices more fidelity and discretion than any other, be looked upon as wanting in veracity and fidelity by the public generally, who get their impressions from being in immediate contact with these camp followers. Not until the profession sees that its door is duly tiled, and suffers none to pass or repass but such as are duly qualified, and ceases by recognition or encouragement to aid unworthy persons, to hold themselves out to the world as being of the household, will the public be undeceived as to the true character of the profession, so that men will unhesitatingly confide in it, and not do it as one confessing a murder.

Such necessity for confidence exists in no other profession, and, like state prisoners in olden times, it ought to be guarded under penalty of death to its custodian, if harm should come through his treachery or carelessness. Then as to our work. Have we reached the highest point of uniformity and system in respect to that? Take the matter of special pleadings. At one time the lines will be drawn so taut that, by superior acuteness and skill in taking advantage of technical defects, justice is defeated, and much trouble, vexation and expense incurred; and then so lax as to occasion an entire failure of justice. It is true that the requirement to state time, place or date, when they are not practically important, as illustrated by one or two of my learned predecessors, has worked unjust disaster. But because the system has been abused, so that it does not accomplish its true purposes, does it follow that in a pet it should be entirely thrown away, as some claim, and all formulation of issues in court discarded? It has always seemed singular to me that a system containing the purest logic, method and means of putting in the nicest practical form just what the parties to a cause claim, just what the issues are, should be so abused and loaded down with strained constructions, not growing out of the system itself, that even logical lawyers should come to use it with reluctance. It is, of course, an evil to carry it to that degree of refinement and strict technicality that will render it impracticable. But a heavy cloud will shadow our work on that day in which we shall despise or neglect method and conciseness in stating the issues in a cause. To adapt special pleadings to the actual necessities of our work, and make the system uniform and just elastic enough to be practical, and not let it down a jot below that, is the great opportunity of the times open to ambitious authors. Such a work, largely drawn from the experience of courts, as announced in their various opinions, invites the genius of him qualified to do it, and promises rich reward, including the satisfaction of having rescued the system from running alternately into impracticable niceties and then to utter confusion. I am not assuming to state just how this matter should be regulated, but

only making a few general suggestions for your more competent consideration. Sometime during the trial the exact points for decision must be extracted from the proofs and allegations in a cause. The facts admitted must be separated and distinguished from those in controversy.

Now, who can make the best analysis of this? The judge while hearing the case in confused trial before the jury, or the counsel who in their offices with perfect familiarity with every detail, can form exact issues by pleading? The plaintiff should state his case with convenient certainty, and his whole case too. Not by simply serving on the defendant a printed form, informing him that the nature of the claim is *assumpsit* or *trespass*, without the slightest intimation of what it is, but by stating just what the plaintiff claims in his own case. The defense should be stated in like manner. Let the pleadings be tested, if you insist upon such laxity, by such rules of construction as are applied to contracts, statutes, etc. Then if the declaration, fairly construed and taken as a whole, does not show a state of facts, and all the facts required to entitle the plaintiff to recover, or if that is to be questioned, no better method can be invented to test the question than demurrer. Right here let me say in a word, though out of line, all I desire to about dilatory pleas. Just so long as rights represented by them are secured to parties, of course they cannot and ought not to be dispensed with. Take away, if you will, all technical particularity of form or phraseology in the declaration, but permit the absence of not a single item of the substance. If a jot of it is excused on the ground that its lack simply renders the pleading inartificial, then the plaintiff may with the same excuse intentionally omit and conceal from the defendant a portion, and perhaps the most vital of his claim. The plaintiff having done that, what in fact and fairness is the frank and reasonable thing for the defendant to do. Not to be permitted to beat about away from the real differences between the parties, but to state whole defense, putting himself at once upon the grounds on which he intends to stand; and above all things he ought not to be permitted to conceal, by

omission or otherwise, any part of his defense. No one, I think, will pretend that it would be convenient or just to allow the defendant to introduce evidence of the statute of limitations without such notice to the plaintiff as would inform him specifically what facts are claimed, and what conclusions of law from them defendant is to claim, or in actions of tort to show license, release, or any other like matter of defense without such notice. So, too, no one can deny that all the issues of law and fact in any trial that is not a sham and a mockery, must be sharply and accurately carved out, and their precise character and importance carefully defined; otherwise they are left to be imperfectly developed in a tumultuous and wrangling trial. Now, if it is necessary to state the issues sometime, what possible objection can there be to having them stated accurately, methodically, logically and artificially in the beginning? Place it beyond the power of a party to induce his adversary to make expense in preparing for something which becomes immaterial, and which he has no good reason to assert, or to assail him with some trumped up matter, which the party assailed by it has no power to meet because he has had no fair notice of it. I am not insisting on impracticable nicety in pleading, which will allow the guilty to escape through some inaccuracy in stating some detail. Let the court look upon the whole statement, and if upon a fair construction of it the adverse party is given fairly and fully to understand what and all he is to meet, and the reasons on which the pleader seeks to stand, let that suffice. But let us make careless statements of issues as unpopular as possible and sacrifice as little of order and system as is possibly consistent with justice. When we destroy the certainty and simplicity of pleading, the finest system ever conceived by the human mind, our work will be without form and void and darkness will be upon the face of every case to which the system is adapted.

But I must close, for I promised in the beginning not to do what my words are threatening. I have alluded to the gloomy view taken by some of the ephemeral nature of our work. I must neither admire nor participate in that sentiment, but look-

ing into each other's faces and reading our inmost thoughts, let us examine for a moment the source of it, and what some features of a faithful picture do actually represent, and see if we are not responsible for the shadows in it. Look at the brilliant and enterprising men, living and dead, within the limits of this association. Examples of skill, genius and wonderful accomplishment come and go in the lives which are hurrying past. They are fully appreciated while on the stage, but when their part is played, and the curtain falls, we turn away as if saying, "What is all this worth!" Is there nothing in it all worth preserving? Is our work entirely selfish? If not, why do we ourselves say, "Let the interest in our associates pass away with their lives?" Even the lives of our model judges and practitioners have not been told in any enduring form. The heights reached by those men were "not attained by sudden flight." The paths by which they upward trod were daily and nightly worn, and yet no survey of them is upon the record by which they can be traced. The pictures of their fields of conflict have faded and gone out with their lives.

Have we

"Any pleasant books that silently among
Our office treasures take their places,
And are to us as if a living tongue
Spoke from the printed leaves or pictured faces?"

And yet our work involves the struggles of intense and anxious lives, and if we do not regard even the best of it of sufficient importance to keep a record of it, how shall we expect the world to esteem it beyond its occasion? But with the bar as we can make it grand, historic, artistic, and cheered by the preserved lives of the past, no work can invite the enthusiasm of life like it. What is more intensely interesting than the formation and development of a case in the mind, with its numberless shades and variations that constantly reveal hidden treasures which ever lure the explorer on with an expectation like that of a miner to the climax, to the full enjoyment of the eureka?

And then the mental encounters with varying success and defeat are experiences of the very soul of pleasant passion. Who goes to such work with complainings or lamentations? What manner of man is he? For what will the true young lawyer exchange the anticipations of his life? Which one of you at midday loaded with work is willing to lay it down but with his life? What aged man is there among us who does not strive to push away the hand of time as it gradually takes off the burden of his life in the evening of his day? But the work is ephemeral! Ah! if it is fame you seek, and that kind the type of which breathed his last in the crater of a volcano on an island in the wild Atlantic, then go join some Buffalo Bill, for a true lawyer will despise the froth and glitter of romantic fame. Besides our calling does not contract the circle of our lives; and if did, it would make it correspondingly choice and cultivated. Compare the fame of Justinian with that of Cæsar. The former stands in fair, well-balanced proportions. The latter sought a bubble reputation, and great as he was, he found it in what was in comparison little better than a first class row. What class of men stand so grandly prominent as Alfred of Oleron, King Edward, or Sir Matthew Hale? Or in our own country, who like Marshall, amid his original and massive works, which rescued our constitution from that inelastic construction which would render it incapable of being adapted to the varying circumstances of the times or progress of the age? But some one says this is judicial fame. True, but did he not go to it by the same paths daily trod by all of us? Did he not climb that mountain which rises directly out of our fields and protects our harvests? Take the purely legal features from the fame of Webster, Choate or Erskine, and what would remain? Within the horizon of your own observation, you see as the rule men whose abilities as lawyers and success as statesmen make most unequal match. There is many an exclusive lawyer who could justify an exchange of the esteem in which he is held for the statemanship of many with large opportunities only upon the ground of insanity.

Let us go, then, from this interesting occasion to our work, never again by a single expression to belittle it, but to encourage accuracy and skill, and foster the highest art and method consistent with a just and free administration of the laws regulating our client's interests, doing good work, square work, in that honor and fidelity demanded by our high occupation. Then, when it is recorded, there will come to us as much true esteem as we shall merit, as well as a just portion of that kind of fame for which fools never hunger or thirst.

A MEMORIAL SKETCH
OF
GOV. JOHN MATTOCKS.

READ BEFORE THE VT. BAR ASSOCIATION, OCT. 26, 1887,

BY O. P. CHANDLER.

Mr. President and Gentlemen :

I confess that I was not only surprised, but delighted, to receive from your committee a request to prepare this sketch, because it seemed like a summons to call me from my quiet retreat to meet once more my brethren of the bar, and because I was pleased to regard it as a kind recognition and assurance that, notwithstanding my long absence, I had not altogether been ignored or forgotten, and that I was still *en rapport* with that profession which I can never cease to love to the last heartbeat.

Your committee, in requesting me to prepare this sketch of Gov. Mattocks, referred to him truly as my former neighbor and friend. That consideration, alone, I am sure, prompted the request, and that only could have induced me to comply with their invitation.

John Mattocks, of whom I am now to speak, was born in Hartford, Connecticut, on the 4th day of March, 1777. In the next year, his father, Samuel Mattocks, removed with his family to Vermont, and settled in Tinmouth, in Rutland county. He was a man of some note, being treasurer of this state and judge of Rutland county court.

Young Mattocks, after receiving a good academical education, commenced the study of the law with his uncle, Samuel Miller, of Middlebury, but completed his studies with Bates Turner, of Fairfield. He was admitted to the bar in 1797, and opened an office in the same year in Danville, but removed to Peacham in 1798, where he continued to practice until about three years before his death, which occurred August 14th, 1847.

Mr. Mattocks was, in 1806, one of the thirteen directors of the Vermont State Bank, and was general of militia in 1812. In the years 1807, '15, '16, '23 and '24, he represented Peacham in the general assembly, was delegate to the constitutional convention in 1836, was member of congress, elected in 1820, 1824 and 1840. He was elected judge of the supreme court in 1833 and 1834, and governor of the state in 1843.

Such is a brief summary of the successful career of one who in his day occupied a large space among the people of this state; and who, by his brilliant talents, cordial manners, and manly bearing, largely won the esteem and respect of his fellowmen.

According to early tradition, young Mattocks at once met with marked success, and soon found himself in the front rank among his legal brethren. He soon extended his practice into the counties of Orleans and Essex, which then made a part of the circuit of most of the lawyers of those three upper counties. Those counties, although set off from Orange in 1797, were not organized until later,—Caledonia in 1799, and Orleans and Essex each in 1800. The first lawyer to settle within the area of those counties was John Mattocks in 1797, followed soon after by Wm. A. Griswold and William Mattocks in Danville in 1798; Ware, Loomis and Prentiss in Montpelier, then part of Caledonia, in 1800-2; Dana and Cushman in Guildhall in 1800-4; William Baxter (father of Portus, late member of congress,) in Brownington in 1801, and Joshua Sawyer in Hydepark in 1810,—to be followed some years later by such lawyers as Fletcher, Paddock, Bell, Hibbard, and Shaw.

Among the leading lawyers of those three counties at that early period were many men of marked abilities, and of high

character in the profession, and during the first quarter of the century the bar of those counties was, I think, not second to any bar in the state. It seems much to say, does it not, that among all that brilliant array of able men, John Mattocks stood *facile princeps*. Yet such was the general judgment and consent of the bar and of the public at that time. It may be true that he did not possess the graceful style and courtly bearing of Cushman, the exaltation and simple pathos of Bell, the legal knowledge and persistent energy of Fletcher, the astute learning of Paddock, or the fine culture and pleasing manner of Shaw, nevertheless, I would say that in the general scope and variety of those qualities which are essential to the great lawyer and advocate, he excelled them all.

But I will not pursue these comparisons further. These were all great men, *par nobile fratres*, and Mr. Mattocks might well have been proud to stand the peer of either one of them.

Of these some moved away, but four of them remained for a long series of years foremost in the trial of causes in those upper counties, viz.: Cushman, Bell, Fletcher, and Mattocks. These, according to general consent, were extraordinary men, each differing from the other, but all of high intelligence, generous impulses, and of uncommon force and power. Like the fabled heroes of old, they were sometimes called *giants*, and to me, in the glamour of youth, they seemed such, for I often sat with admiration and delight to witness many a "joyous passage of arms" between those valiant knights, and I assure you they gave each other many a hard knock professionally, yet I am sure that in the many long years they were together at the bar their personal friendship was never interrupted for an hour.

I have thus, gentlemen, endeavored to give you a general view of the surroundings and of the companions of Mr. Mattocks during his professional career. Shall I now speak of his character as a lawyer and advocate?

Mr. Mattocks possessed an acute and logical mind and sound judgment, a tenacious and comprehensive memory, a power of analysis to unravel the most complicated cases, a remarkable

power of statement as well as of forcible argument and illustration. In his addresses to the jury,—and this was undoubtedly his great forte,—his style of argument was plain and simple, his manner was persuasive and honest, and with a nature sensitive and sympathetic, his personal presence was so winning that jurors were only too happy to be able to assent to his propositions. One of the less important qualities of his nature, although by it perhaps he is best remembered, was his infinite wit and humor. The flash of his wit was quick and sudden, and his humor was inexhaustible. Whenever he chose to open up the rich vein of his humor, that wellspring of mirth and fun, he seldom failed to bring a smile upon the faces of the jury, and, as with a magic wand, to touch their hearts. These qualities he sometimes brought to his aid with great effect, but he well knew that they were dangerous weapons, for in a good and just cause no one could be more serious and on occasion more pathetic than he. He seldom resorted to raillery and ridicule, unless, hard pressed, he felt that he was leading a forlorn hope, and sought, by amusing the jury, to divert their attention from the serious and damaging arguments of his opponents. These qualities of mirthfulness and wit made him a great favorite with the court and jury, and when off duty he was always in requisition among his legal brethren, especially when enjoying their *noctes ambrosianæ*, on Saturday at e'en.

When Judge Mattocks came to the bench in 1834, there were sitting there as able a body of judges as ever sat upon the bench in this state. These were Charles K. Williams, Stephen Royce, Samuel S. Phelps, Jacob Collamer and John Mattocks. These were men of whom Vermont will never cease to be proud.

About all that can be known of Judge Mattocks, *when on the bench of the supreme court*, must be obtained from his judicial opinions, as reported in the sixth and seventh volumes of our reports. These opinions, I think, exhibit the same power of analysis, clearness of statement, and force of argument as I said he had manifested when at the bar. He is, perhaps, best remembered for his dissenting opinions in the cases of *Lyon v.*

Strong, and Burr's Exrs. v. Smith. These were both leading cases, and were contested with great vigor and spirit, not only at the bar, but also on the bench.

In presiding in the county court Judge Mattocks was invariably kind and courteous to the members of the bar, and possessed a great facility in disposing of the business of the court, and I think that I may safely say that, by reason of his clearness of insight into the merits of a case, and of its legal bearing, and of his facility of stating them to the jury, justice and equity were as well maintained in his court as often happens in the administration of justice.

I am not unmindful of the fact that complaint was made of Judge Mattocks that, in his instructions to the jury, he was not always careful to conceal from them his own opinions of the merits of the case. I have no doubt that this sometimes occurred; and if this be an offence, then he sometimes offended unconsciously, as many good judges have done before and since. In his long experience of more than thirty years at the bar, he had seen so much of the inexperience of jurors, and of the disagreements and uncertainties of jury trials—to say nothing of the habits acquired in his long partisan advocacy at the bar—that it was not in his nature, warm and impulsive as it was, for him to maintain a cold neutrality when on the bench, and not to feel a solicitude, lest through any neglect of his the jury should go wrong, and an honest suitor be thereby deprived of justice. If this speaks less for the credit of the Judge, I think that you will say it speaks more for the better instincts of the man.

I will presume to say that Judge Mattocks when at the bar had seen in others, and had himself, perhaps, practiced so many of the arts of the advocate, that in coming to the bench he was a good illustration of the saying that a reformed rogue makes the best police officer, and that, generally, the greatest outcry was made against him when some subtle advocate found an upright and clear-sighted judge in his way when attempting to mislead the jury to render a wrong verdict in favor of a dishonest client.

In his early years, Mr. Mattocks, like most of the people of Peacham, belonged to that noblest of all the political parties of this country, the grand old FEDERAL PARTY. During all those years of intense excitement and controversy, which led to the war with Great Britain, Mr. Mattocks was the champion and leader of his party in northern Vermont, and his political influence was felt throughout the state, and wherever his political friends were gathered together, either for consultation or action, there he was found, the trusted counsellor and efficient supporter of his party.

His first appearance in the general assembly was in that memorable year 1807—the year of the capture of the frigate “Chesapeake” by the British, and of the adoption by congress of the Embargo—events which shook the political parties of this country to their foundations. He was also a member during the years 1815 and 1816, when the democracy came into power in this state. In fact, during several of the years of this period, political parties were very nearly balanced, so that neither party was without an occasional feeling of triumph, as the majorities swayed from side to side. This feeling of strife, as you know, pervaded all classes of the community, so much so that staid clergymen often became active partisans, and women, even, became zealous politicians.

In this connection you will allow me to relate a little incident to show how Mr. Mattocks induced my old pastor and friend, upon one occasion, to administer some practical hints to his democratic audience by compelling them to listen to some of Dr. Watts’ hymns, which they assumed to be intended to apply to themselves.

You are aware that in those early times election day was a great event, and next in importance to the military parade and election ball was the election sermon. At a session of the assembly, when the federalists were in power, they appointed for the next year’s sermon that grand old patriarch, Mr. Worcester, of Peacham, and upon shoulders more worthy such honor was never placed. But it chanced that before the day came around the

democrats were in a majority, and my reverend friend had the honor of appearing before a democratic governor, councillors and representatives, all buoyant and flushed with success, and ready to take offence on the slightest pretext. As they knew that Mr. Worcester was in sentiment a federalist, and that, when he attempted it, he drew a pretty long bow, they were on the lookout for a shot from his quiver. But, strange to say, the prayers and sermon were excellent and unexceptionable. But the democrats were sure they discovered *offence* in the hymns. Now, I am sure you will say that they ought never to offend a good and virtuous audience. For example—

“ Lord, if thou dost not soon appear,
Virtue and Truth will fly away ;
A faithful man among us here
Will scarce be found if thou delay.”

Or this one—

“ Lord, what a thoughtless wretch was I
To mourn and murmur and repine,
To see the wicked placed on high,
In pride and robes of honor, shine.”

As you may suppose, these hymns were more edifying to Mr. Mattocks and his political friends than to the democrats, who swallowed their disgust, but they never forgave good Mr. Worcester, nor Mr. Mattocks, whom they shrewdly suspected had more to do in selecting the hymns than did Mr. Worcester himself.

Mr. Mattocks when in congress, though a useful member, did not engage in the public debates. Indeed, I think that the character and bent of his mind was not suited for that kind of public discussion. He was not the only one whom a long lifetime of practice in the court room had disqualified for the arena of parliamentary debate. In his last appearance in that body, elected in the year of that extraordinary ground-swell and high carnival, the Harrison campaign, his constituency were not only

largely of the whig party, but they had already begun to feel the nascent throes of that rising *moral sentiment*, which continued its onward sweep until the whole system of human slavery in this country was overthrown.

In presenting a petition of his constituents for the abolition of slavery in the District of Columbia in 1841, he made a few remarks which contained as bold words as have been often heard within the halls of congress. These remarks, now familiar to us all, when viewed in the light of subsequent events may seem tame and commonplace, but not so did they appear at that time. He was asking for justice for an oppressed race, and he spoke in the presence of their oppressors, and without preface or apology, surrounded by the representatives and supporters of slavery, and holding up the petition of the constituents, he said:—"I present this petition because I believe in my soul it ought to be granted, to free this land of liberty from the national and damning sin of slavery, in this our own bailiwick, the District of Columbia."

While Mr. Mattocks was governor, the office, though honorable, carried with it few duties except the customary routine. But in one respect he deviated from the custom of other governors. Thinking, perhaps, to relieve the monotony of his official life, and at the same time to gratify a small but respectable body of Christians, he appointed Thanksgiving on the 25th day of December. But this, like most attempts to harmonize religious sentiments, proved a failure. The people at large, then not as familiar as now with the beautiful rites and sweet significance of Christmas, were unwilling to see their old New England Thanksgiving disgraced, as they said, by what they irreverently termed Popish nonsense, and good Churchmen were equally unwilling to see that beautiful festival of the Church, commemorating the Saviour's birth, which has been cherished by Christians throughout the world for a thousand years, merged into what they were pleased to call a "Pumpkin pie Holiday," under the authority of a state governor. I am quite sure that no governor has since attempted to change Christmas into Thanksgiving.

But I must hasten to speak of Mr. Mattocks in his personal and private life. Of his earlier years I could only speak from tradition, for long before I began to know him the heyday and flush of youth was gone. Of the faults or follies of his youth, therefore, I will not attempt to speak. It is true that in Caledonia county there are many stories of his youthful *escapades*, but whether fact or fable the time is too remote now to determine.

Mr. Mattocks was interested in the public affairs of the town. He was generous in his charities, and contributed liberally in the support of public worship, upon which he was a constant attendant. He was much attached to his home and friends in Peacham, and he carried into his home-life the same genial and light-some presence as elsewhere.

Do you ask, why should he make his eyrie in this mountain town his life-long home? I answer: Not only because the people of Peacham respected him, were proud of his success, and encouraged him in his high endeavors, but, also, because he might well love his home for its own attractions. Located on that great military road, built by Gen. Hazen for the national government, from Newbury to Canada, it was for many years, I may safely say for the first quarter of the century, the foremost town between Newbury and that province for wealth, refinement, and all that contributes to the comforts and pleasures of social life. Many causes, which I have not time to state, contributed to her success. But I am sure that it was mainly due to the many brave and noble men and women—pioneers—who with great energy and wise forecast laid her foundations upon the broad basis of religion, virtue and sound education. When offered the choice between the character of the Academy, with the income pertaining to it, or the location of the court house and jail, they wisely chose the former, and on that far-famed "Academy Hill," *the pride and glory of Peacham*, at once arose the academy, and at the side of it the meeting house, so that religion and science walked hand in hand, friends and coadjutors. And the wise and devoted Worcester, who, like another Moses, led the people of

Peacham in respect to their religious sentiments more than forty years, stood side by side with Carter and Chassels, those great teachers, to whom Peacham owes a debt of gratitude which she can never repay.

It has been customary of late with some people, carelessly, perhaps, to say of Peacham, "*Troja fuit*,"—Peacham is dead. On the contrary, she is very much alive, and nobly fulfilling the destiny which Providence designs for her. The inevitable laws of trade, it is true, have drawn away to other spheres many of her young men. She grudges them not, but bids them "God-speed." Yet there still remains at home, far removed from the noise of the engines, the factory bells, and the smoke of the tall chimneys, an intelligent and industrious population, all prosperous and happy. Undisturbed in their quiet home, they can "Look out and see the stir of the great Babel, and not feel the crowd." Her still famous Academy, that light which the fathers lighted on that "hill of science" ninety years ago, whose rays have been streaming down through the long vista of succeeding years, still sending forth its benign radiance over many hill-top and valley, under the fostering care of that able scholar who has just been called out from his quiet study by the voice of the people to represent them in the senate chamber.

On a recent visit to Peacham, on a pleasant summer day, I stood in the cemetery, on that "Academy Hill," to look upon the graves of the departed, and to take one more look, so familiar in my school-days, upon the beautiful panorama which that scene presents. And as my eyes sought for the old homesteads of the early pioneers of whom I have spoken, I could hardly realize that they have long since gone to their last home, leaving behind them the record of their noble lives and these pleasant homes to those who should come after. May the time be far distant when the people of Peacham shall cease to honor and respect their memories.

Mr. Mattocks was a great reader, and possessed a large acquaintance with works of science and learning and with the literature of his day, and like most lawyers he often sought relax-

ation in works of fiction. And of all these I am sure he most enjoyed the works of Scott, for he was a great admirer as well as favorite of the Scottish people, with whose character and habits he was quite familiar, for he lived within a few hundred rods of the *Scottish border* in Barnet, so near, indeed, as to be almost within sound of the bagpipes. And I am sure he must have been delighted to see so many of the Scottish names, as well as their character and habits and broad Scotch dialect reproduced in those charming volumes of "Waverly," whose mysterious appearance at that time so surprised and delighted the world.

Governor Mattocks in his later years, having acquired a considerable estate, began to experience that feeling which too often accompanies old age, as "The last infirmity of noble minds." He seemed conscious of this, for he once jocosely remarked that Avarice is one of the greatest of human blessings, for in old age, when other pleasures begin to fail us, this, like a true friend, stands by to the last.

But Mr. Mattocks for some time before his death ceased to feel much interest in the affairs of this world, for besides some strong premonitions of the fatal shock which finally ended his days, his last years were also clouded by reason of the sudden and tragical death of his youngest son, on whom his affections had been strongly placed. It is related of him in an excellent sketch by his friend, the Rev. Mr. Goodwillie, that on the occasion of the funeral obsequies, while standing by the grave of the deceased, he said to the multitude who attended the funeral—"With the mangled body of my son I bury my ambition and love of the world, and God grant that they may never revive." Mr. Goodwillie adds that—"Regretting the errors and delinquencies of his past life, he settled his worldly affairs, made his last will, declined a re-election to the office of governor of the state, and joined the Congregational church in Peacham, of which he continued a member till his death."

I occasionally saw Gov. Mattocks on my visits to my old home, the last time being shortly before his death. At that

time he seemed quite alone ; his wife was long since dead ; his children had all moved away. He had sold his old mansion, and was boarding at the parsonage. He received me with great cordiality and kindness, and conversed of old times in a very cheerful way. But I observed that although his manner had an air of cheerful serenity, yet his features bore the marks of sadness, and at times his eye had an absent and far-away look, as if he was losing his hold on the affairs of this world, and was peering into the great mysteries of the one he was so soon to enter. In a few months I learned that he had passed the boundary, to enter upon the life beyond.

I have spoken of the almost life-long companionship of the four advocates of the bar, who together rode the circuit of those northern counties for more than thirty years. I cannot conclude this sketch without referring to a scene in court, when one of them, Mr. Bell, gave expression of the feeling of comradeship and good fellowship of those early days. After a long absence from the bar, he had volunteered to defend a poor woman, accused of the murder of her child. An account of the trial appeared in the *Vermont Watchman*. In his opening remarks he said :

"May it please your Honor and gentlemen of the jury,—I stood among giants, though not of them. My comrades of the bar have fallen. Fletcher, the untiring and laborious counselor, the persuasive advocate, the unyielding combatant, is where? Eternity echoes *here!* Cushman, the courtly and eloquent lawyer, the kind and feeling man, the polished and social companion and friend, where now is he? The world unseen can only say. Mattocks lives, thank God, but is withdrawn from professional toil, from the clash of mind on mind, the combat of intellect and wit, the flashing humor and grave debates of the court room, to the graceful retreat of private life. I am alone, an old tree, stripped of its foliage, and tottering beneath the rude storms of seventy winters." * * *

By way of response, Gov. Mattocks wrote to Mr. Bell the following characteristic letter :

"PEACHAM, 16th January, 1847.

"BROTHER BELL—In the *Watchman* I have just seen a specimen of your speech in the murder case. It is worthy of being inserted in the next

edition of *Elegant Extracts in Prose*. Sir, you are the last of the Mohicans, and the greatest, and when you die the race will be extinct. You have justly called the two lamented friends giants, and with the discrimination of the reviewer have given to each their distinguishing traits of excellence; and although your introducing me with them was gratuitous, it was kind, and the traits you have given me I owe to your generosity. You say 'I was not of them.' This was a fiction, used in an unlaywer-like manner, to prevent self-commendation, unless, indeed, you meant, as Paul might have said, that *he* was not of the prophets, because he was a head and shoulders above them. I am proud that you have sustained and surpassed the old school of lawyers. Sir, you are the Nestor of the bar, and may be truly called 'the old man eloquent.'

"I am, sir,

"With great respect,

"Yours, &c.,

"JOHN MATTOCKS."

"N. B. I reserve the all important part of this letter to stand by itself —Let us hold fast to our faith in Christ; we near the brink."

I have thus, Mr. President, endeavored to present to you some memorials of my former friend and neighbor. I am fully sensible how faint and meager is the picture which I have presented. But who, after the lapse of half a century, shall attempt to portray in words the characteristics of a great advocate? His fame, like that of a great actor, must be mainly traditional. Other men of genius, whose fame survives them,—poets, artists, statesmen,—live in their works. Not so the great advocate. When his voice ceases to be heard, the magic and power of his genius will be lost forever.

Of John Mattocks, enough remains to show that he was a great man in many ways,—lawyer, judge, statesman. But the record of that which most made his fame when living, and which marked him as the great advocate that he was, "*alas! it was writ in water.*" And yet, as the soldier seeks to preserve the memory of his dead comrade by strewing flowers upon his grave, so have I sought in my feeble way to gather up what yet remains, to keep alive for us the memory of our deceased brother. If I shall have said anything that may help to rescue from oblivion his great name, or that shall give a momentary satisfac-

tion to any who love and respect his memory, I shall not have written in vain.

And now, Mr. President, if you would pardon me a word personal to myself, I would say that, however much I am may have failed in the purpose of this sketch, yet to me it has been like a pleasing dream, thus, as it were, to mingle again with the men of a former generation. It has awakened anew my love for my old home. I have in fancy revisited her "Caledonian Hills," still radiant with the lightsome glow of former years. I have lived over again my youthful days, and I have renewed my love and homage of parents and kindred now sleeping beneath the turf within her consecrated grounds, and I have recalled to mind those touching words of the Scottish bard, that so often haunt my memory, addressed to his own Caledonia, over the sea :

"O, Caledonia, stern and wild,
Meet nurse of a poetic child,
Land of my sires ! what mortal hand
Can e'er untie the filial band
That knits me to thy rugged strand :
By Yarrow's streams still let me stray,
Though none should guide my feeble way,
Still feel the breeze down Ettrick break
Although it chill my withered cheek :
Still lay my head on Terviot stone,
Though there, forgotten and alone,
The Bard may draw his parting groan."

APPENDIX.

REPORT OF SPECIAL COMMITTEE

ON

SESSIONS OF THE SUPREME COURT.

VERMONT BAR ASSOCIATION, }
Office of the Secretary. }
November 1, 1886.

The following report, prepared by a special committee to consider the matter of the sessions of the supreme court, was unanimously adopted at a meeting of this association, held at Montpelier, on the 28th day of October, A. D. 1886.

Respectfully,

GEO. W. WING, *Sec'y.*

TO THE BAR ASSOCIATION :

Your committee to whom was referred the subject embraced in the pending bill for the Change of Terms of Supreme and County Courts, respectfully report :

That in their judgment there are weighty reasons in favor of the bill. The state has now provided a court room admirably adapted to the uses of an appellate court. It is in the same building with the state library, which is maintained expressly for this service, in which is a quite complete collection of books of the law. In the mere matter of convenience it is obvious

that the bar can better prepare and more easily present their causes to a court in the new building than in the various county seats, attended by the various degrees of insufficient facilities found in all these different places, where private libraries alone are relied upon for authority and argument.

It is obvious to all, and is conceded by the court, as well as the bar, that the business of our supreme court in the different counties is now conducted in an exceedingly unsatisfactory manner. The terms are made as brief as possible, by reason of the desire of the judges to escape from the discomforts of country hotels, which are often dangerous to health in inclement seasons, and which are only agreeable when residence is made tolerably permanent, and when the accommodations are good.

In consequence, when the court arrives at a county seat, the first study appears to be the time table, to ascertain the most expeditious way of getting out of town. The cases are rushed along ; the hours of the entire day are consumed in the court room ; the evenings are devoted to hasty consultation ; and the nights, (and possibly the Sundays), to the drowsy writing of alleged opinions, often unsatisfactory to both court and bar, because authorities desired are not available, and never presenting the best work of our judges, because the circumstances do not admit of good work. The only wonder is that more inconsistencies and embarrassments do not creep into results obtained so crudely.

Worse than this, the causes heard at the latter part of each of the fourteen county terms are not considered at all. This covers the whole business of the term, if it is short, as is frequently the case. The causes are then "carried off." Probably half of our supreme court business is taken away from the counties undecided. In view of this danger, counsels have learned to elaborate and multiply the pages of their briefs. After a month of other work the oral argument is forgotten, and the case might as well have been presented on the paper alone at the first. The causes are assigned to the judges, not after consultation and decision for the purpose of drawing up

the opinions, as is the practice in the more authoritative of the appellate courts of the country, but on the argument in arbitrary rotation. When the court hastily seize their gripsacks and leave town, each one absorbs the causes that have fallen to his lot, and thereafter they are his. The other members of the court take apparently no further interest in them, until, months after, an opinion is passed around *by mail*, to which assent is asked; and when a majority have concurred, a decision or mandate is filed with the clerk, and the opinion goes to the reporter.

This is no way to try cases. It is not satisfactory to the court, bar, or clients. The delays which are caused have become so flagrant as to be made the occasion of a special report of our committee on jurisprudence and law reform, with the recommendation of a bill to be passed by the legislature requiring more rapid action and decision by the court. The evil is a glaring one. The remedy is not by a law requiring greater speed, but by a change of the whole miserable system.

If our legislators knew, or our court would tell, how many cases from year to year are not reported at all, for the reason that after a result has been hastily announced it has been found to be incorrect, or involving bad or inconsistent law, the aggregate would be appalling. In the face of an express statute requiring an opinion to be filed with the reporter in every case, we all know that the percentage is very large of cases where no opinion is furnished; usually the more important, delicate, and intricate cases are the ones so treated; our reports are filled with the record of "easy cases," so-called, which never ought to have gone to the supreme court at all, while every lawyer has in mind some nut hard to crack, but involving some question, important to clients and to the profession, in which the only satisfaction afforded has been the docket entry of "Judgment affirmed" or "Judgment reversed,"—with costs. Too often parties have waited one, two, three, even four years for that much of relief. And too often, also, have parties been to the expense and labor of preparing exceptions or appeals, only to be coolly informed that this question has been disposed of in an unreported

case somewhere "over the mountain." When the consultation by mail turns out inefficacious, when two of four judges are impressed with one view of a case and the other two think otherwise, or when only three are present in a county, the cause is ordered to the general term for re-argument. This is what the parties were entitled to at first, the opinion of a majority of the full bench. But lawyers all know how hard it is to go over a case for the second time with no intimation of the point of divergence, and utterly at sea as to why they are put to this trouble and expense. And the causes of the general term in the past have not fared much better than those heard in the counties, save in the fact that more judges hear them. The hours are long, the nights broken, and the usual result follows of a vast mass of undecided causes, dumped into the capacious maw of a judicial carpet-bag, to be carried about and worn up by friction with each other, until thoroughly forgotten, when the consultation by correspondence is begun.

The institutions of Vermont were admirably adapted for the uses of the times in which they were established, no doubt. The spectacle of a supreme court on wheels, rolling over the hills and valleys of the several counties, nearer and more remote, was calculated to impress the citizens of each section with a sense of the personal identity of the representatives of the law in its majesty, and tickle their fancy with the notion that these great and grave men are paid liberally to come among them for the distribution of justice, without favor, free to all.

These customs and notions have changed in our later days. The honorable court usually arrives by sleeping train,—and too often does it work, and departs in the same. Nobody knows, and nobody cares, save the few lucky members of the bar who have cases to argue. Even clients avoid the court house when the supreme court is in town, and the village loafers prefer the grocery or the store.

Now for a moment let us think of what we might fairly expect to have if the proposed change is adopted. Take the court of appeals of the State of New York, for an example, with such simplifications as our more modest tastes prefer.

We should have in every cause the judgment of the whole court, whereas now we often get a decision concurred in by only three judges,—an actual minority of the bench. We should have our court meeting for a session where the consumption of considerable time is anticipated ; free from the desire or opportunity of an early departure ; where steady work must be settled down to, and can be faced under such circumstances of comfort and such freedom from distraction as to give us good work from all. We should have, let us trust, shorter hours in the court house, more time taken for consultation and for study ; there is certainly a good library at hand, and comfortable apartments for secluded labor, as well as for general discussion by the court ; we should expect causes to be taken up in order, and results to be announced from time to time, as soon as reached ; we should not expect the hearing of cases to be pressed faster than the contemporaneous consultation could carry their consideration, so that no cause should remain more than two or three weeks undecided, unless for special cause ; we should have, as we think, no trouble whatever in concluding the business year by year ; in fact, instead of waiting for the annual term in each county, as now, we should be able to docket our causes for review as soon as the exceptions are filed below, and thus in many cases should save six months or more in the time of final hearing. All this is not guess work or imagination. It is simply taking observations and lessons of other states, who have adopted better and more civilized methods. The world cannot stand still. A peripatetic supreme court is a relic of barbarism.

Two or three objections may be noted : It is said that expense to clients will be greater. But a great many causes come to Montpelier under the present system ; all the really important cases are heard here ; the others, many of them, do not deserve the consideration of the supreme court ; and the added expense after all is but a trifle ; it is only the car fare of the lawyer who comes to try the case, with his hotel bill if away from home. This is never thought of in states where distances are immensely greater than ours ; and the lawyers know that by

coming to a place devoted to the constant session of the supreme court they would be able to try their cases infinitely better; they would be free from the interruptions and distractions of office labor; they would have opportunity for work and study in preparation, with the best facilities which the state affords; they would be surrounded by a judicial atmosphere, with competition, observation of others, comparison of methods and forms, and every stimulant to shun hasty and careless methods, and put forth their best energies; in fine every case would be better tried, and better considered, so that the decisions of our state might, as we hope, attain much additional value and weight.

Again, it is said that our young lawyers in our country towns will be deprived of the stimulant which the migratory court affords, and the opportunity to acquire by practice facility in argument before the court *in banc*. Possibly there is something in this, yet it is not complained of elsewhere, and in fact if these young lawyers are worth developing at all, they will have ambition and energy enough to bring their cases here and try them for themselves, under circumstances a hundredfold more stimulating than the drowsy atmosphere of the local and comparatively insignificant tribunal.

And once more we shall hear that not only have our fathers enjoyed this wandering minstrel show, but the constitution assures its perpetuity. Not at all. The courts of our justices of the peace, our county courts, and our courts of chancery in every county, fully comply with all the requirements of the constitution in that behalf. The court of final and ultimate review is not required to be local. The supreme court itself will have the interpretation of this matter, and unless they prefer to trundle they will have no difficulty whatever with the point.

This is a matter in which the bar should speak. If we are not agreed, then there is no adequate basis for the change. If we are, then our views are certainly entitled to large consideration. It is a matter peculiarly within our knowledge, and which

should be dealt with in the light of our convenience, and the opportunity afforded for our best work.

If we can agree on this point, your committee believe that another step will be taken in the direction of the many improvements and reforms already inaugurated through the progressive and intelligent action of our association.

We, therefore, recommend the adoption of the following resolution :

Resolved, That in our judgment careful consideration, prompt decision, and accurate determination of causes in the supreme court, would be greatly promoted by its permanent establishment in the new court room in the library annex of the capitol.

A. F. WALKER, }
C. H. HEATH, } *Committee.*
C. A. PROUTY, }

AN ACT REGULATING MESNE AND FINAL PROCESS IN CIVIL ACTIONS AND PROVIDING REMEDIES SUPPLEMENTAL TO EXECUTION.

It is hereby enacted by the General Assembly of the State of Vermont :

SEC. 1. Every writ of mesne process shall be a summons only, unless otherwise provided.

SEC. 2. Such writ may contain a precept for the attachment of the goods, chattels, or estate of the defendant, according to form 2, of section 4550 of the Revised Laws, provided that the plaintiff, his agent or attorney, shall first make his affidavit, to be endorsed on or attached to the writ, stating that the plaintiff has a claim against the defendant, specifying the nature of it, upon which he expects to recover in the action to be commenced by such writ, and the amount due thereon, as near as may be, or claimed to be justly recoverable, as damages ; and further stating that the affiant has reason to believe, and does believe :

1. That personal service cannot be made upon the defendant, by reason that he resides out of this state, or is concealed within it, or has left it, and is not expected by the affiant to return in season to be personally served with a summons in the cause.

Or

2. That the defendant has removed, or is about to remove his property out of this State, with intent to defraud his creditors, or to prevent its being taken on legal process. *Or*

3. That the defendant has disposed of, or concealed, or is about to dispose of or conceal his property with intent to defraud his creditors, or to prevent its being taken on legal process.

The foregoing provisions shall apply to actions commenced by trustee process ; in which case the form of the writ shall be made to conform to form 46 of section 4550 of the Revised Laws.

SEC. 3. Such writ may contain a precept for the attachment of the goods, chattels or estate of the defendant, and for want thereof, for the arrest of his body, according to form 1 of section 4550 of the Revised Laws, provided only that the plaintiff, his agent or attorney, shall first make his affidavit, to be endorsed on or annexed to the writ, stating that the plaintiff has a just claim against the defendant, specifying the nature of it, upon which he expects to recover in the action to be commenced by such writ, and the amount due thereon, as near as may be, or claimed to be justly recoverable as damages ; and, in actions founded on contract, further stating that the affiant has reason to believe, and does believe, either :

1. That the defendant has removed, or is about to remove his property out of the state, to an amount exceeding twenty dollars, or sufficient to satisfy the demand upon which he is sought to be arrested, with intent to defraud his creditors, or to prevent its being taken on legal process. *Or*

2. That the defendant has disposed of, or concealed, or is about to dispose of or conceal his property, of the amount and with the intent above stated ; *or* (in cases other than such as are founded on contract,)

3. That the defendant is about to leave the state without leaving therein property whereon an execution that may be obtained in such action can be levied, and that the defendant will not be personally forthcoming to be taken upon such execution.

SEC. 4. The court, before which any civil cause is pending, may at any time, before judgment, make an order, and issue process of attachment of property, and trustee process, or of attachment and arrest therein, when not made on the original writ, upon like evidence as is above provided, authorizing the issuing of such process originally ; and the court may, upon

application of any defendant who has been arrested, and for good cause shown, order his release from such arrest, and discharge the bail taken, if any, or reduce the amount of the bail ; but the writ shall not be abated on account of such release and discharge.

SEC. 5. The examination and proofs provided for in sections 1479, 1480 and 1481, of the Revised Laws, shall be on the question whether the matters set forth in the affidavit on which the process of arrest issued, are true, in such particulars as to authorize the issuing of the process ; and the authority signing the writ, or the judge shall certify upon it his findings in this respect.

SEC. 6. An execution against the body of a judgment debtor may issue according to form 5 of section 4550 of the Revised Laws, on judgment recovered, in the following cases :

1. In an action for the recovery of damages on a cause of action not arising out of contract, where the defendant is not a resident of this state, or is about to remove therefrom, or where the action and judgment are for an injury to person or character, or for seduction, or for criminal conversation, or for injuring, or for wrongfully taking, detaining or converting property, and in actions to recover damages for the value of property obtained under false pretenses or by false tokens or fraud.

2. In an action for a fine or penalty, or for money or property received, and wrongfully withheld, embezzled, or fraudulently misapplied by a public officer, or by an attorney, solicitor or counsel, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or any person acting in a fiduciary capacity, or for any misconduct in office. *Provided*, that the court rendering the judgment shall in any such case, adjudge that it is a proper one, under the law, for the issuing of an execution against the body, a minute whereof shall be made upon the execution by the authority issuing the same ; and the question whether such minute

was erroneously or improperly made, may be examined and determined, as is provided in section 1533 of the Revised Laws.

SEC. 7. No woman shall be arrested on mesne or final process, in any civil action, except for a wilful injury to person, character, or property.

SEC. 8. After the issuing of execution against property only, any person indebted to the judgment debtor may pay to the officer holding the execution for collection the amount of his debt, or so much thereof as shall be necessary to satisfy the execution, and the officer's receipt therefor shall be a sufficient discharge for the amount so paid; but this provision shall not apply to the case of a debt created in either of the modes specified in sections 1075 and 1076 of the Revised Laws, and thereby exempted from attachment by trustee process.

SEC. 9. Whenever any such execution shall have been returned unsatisfied, in whole or in part, the judgment creditor shall be entitled to an order from the court of insolvency, for the district in which the judgment debtor resides, requiring him to appear before such court, at a time and place specified in the order, to answer and make disclosure of any property, money or thing in action, belonging to him, and of any property, money or thing in action due, or held in trust to him.

SEC. 10. After the issuing of such execution, and before the return thereof, upon proof, by affidavit, to the satisfaction of such court, that such judgment debtor has property which he unjustly refuses to apply towards the satisfaction of such execution, said court may make an order requiring the judgment debtor, at a specified time and place, to answer concerning the same, and to make such discovery as is above provided in section 9.

SEC. 11. Instead of making an order requiring the attendance of the judgment debtor, as provided in the two preceding sections, the court, upon proof, by affidavit, to its satisfaction,

that there is danger of the judgment debtor's leaving the state or concealing himself, and that there is reason to believe that he has property which he unjustly refuses to apply towards the satisfaction of such execution, may issue a warrant requiring the officer to whom directed to arrest such debtor, and bring him before said court to answer concerning his property.

SEC. 12. Upon his appearing or being brought before the court, such debtor may be examined on oath, and witnesses may be required to appear and testify, on the part of either party, in the same manner as in the trial of an issue. The court may in its discretion appoint a referee to take and report such examinations, and require the debtor and witnesses, or any of them, to attend and be examined before him. No person shall, on such examination, be excused from answering any question, on the ground that his examination, or answer, will tend to expose him to a prosecution for crime or penalty, but his answer shall not be used as evidence against him in any criminal action or proceeding.

SEC. 13. If it shall appear upon, or pending any such examination, that there is danger of the debtor's leaving the state, and that he has property which he has unjustly refused to have applied upon such execution, he may be ordered by the court, to enter into a bond or recognizance, with sufficient surety, that he will from time to time attend before the court, as it shall direct, and that he will not, during the pendency of the proceedings, dispose of any of his property, not exempt from attachment, or execution. In default of entering into such undertaking, he may be committed to jail, by warrant of the court, as for a contempt.

SEC. 14. Said court may order any property of such debtor, in the hands either of himself, or any other person, or due to such debtor, not exempt from execution, to be disposed of and applied upon the execution, and may require of such debtor any such written transfer or assignment, as may be necessary for the purpose.

SEC. 15. If any person, party, or witness shall disobey an order of the court or referee, he may be punished by the court as for a contempt ; but in case of a commitment to jail, under this chapter, the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged by said court on such terms as may be considered just.

SEC. 16. Said court may allow to the judgment creditor, or to any party so examined, whether a party to the action or not, witness fees, and other proper costs, including the fees of the judge and register for like services provided in section 1884 of the Revised Laws, and may require their payment by order.

REPORT OF COMMITTEE

—ON—

JURISPRUDENCE AND LAW REFORM.

TO THE PRESIDENT OF THE VT. BAR ASSOCIATION :

By section eleven of the Constitution of our Association it is made the duty of the Committee on Jurisprudence and Law Reform to report to the annual meetings of the association on all proposed changes in law or practice referred to them, and also to report "such changes or modifications in existing law or practice, or other matters affecting the interests of the profession, as in their judgment ought to be proposed by the association."

Under this requirement of the constitution, your committee have taken note of certain defects, as they regard them, in existing laws and modes of judicial proceedings, and recommend such changes and modifications thereof as is herein indicated.

1st. We recommend the repeal of section 696 of the Revised Laws, which prohibits the court of chancery from entertaining a suit concerning property, except a foreclosure of a mortgage, where the matter in dispute, exclusive of costs, does not exceed fifty dollars.

There is a class of injuries for which redress belongs exclusively to the Vermont Court of Chancery, and can be redressed only by such remedies as belong to that court, such as

enforcing the specific performance of contracts ; reformation of written contracts to make them conform to the true intent ; preventive remedies, as by injunction, &c., &c. As the law stands, by section 696, if the property-right in question does not exceed in value fifty dollars, the aggrieved party has no redress in any court, although the fourth article of our Declaration of Rights declares that "Every person within this state ought to find a certain remedy, by having recourse to the laws, for *all* injuries and wrongs which he may receive in his person, property or character." The unjust operation of this section may well be illustrated by the case of *Mix v. White*, 52 Vt. 284, where a note for \$200 was sued, and the offer was to prove in defense by parol that the consideration for the note was \$100 only, and by pure mistake the note was written \$100 too large. Though this defense was properly excluded at law, the defendant fortunately had a remedy in chancery ; but if the mistake had been only \$50, he would have been without redress, and when told that such was the law, would have been forced to say,—using the profound expression of Mr. Bumble—"Then the law is an ass." Any distinction in respect to limitation of jurisdiction by the amount in controversy between courts of law and courts of equity seems to stand upon no reason.

2d. We recommend a change in the law that a party cannot, under any circumstances of surprise, impeach his own witness by proof of inconsistent statements. This is illustrated in the case of *Cox v. Eayres*, 55 Vt. 24, and a beneficial change suggested by quoting from the English and Scotch law, which has been substantially adopted by statute in Massachusetts. The act cited provides that "a party producing a witness shall not be allowed to impeach his credit by general evidence of bad character ; but he may, in case the witness shall in the opinion of the judge prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has at other times made a statement inconsistent with his present testimony," &c. We recommend a similar enactment.

3d. Until the legislature shall conclude to remove the present existing disabilities of husband and wife as witnesses for or against each other, if they ever do, the unintentional error of the Revision of 1880 should be corrected ; which was by failure to reproduce accurately that part of the statute of 1863 that provided that where both are properly joined, either as plaintiffs or defendants, *both* shall be competent witnesses, and limiting the provision to the case of the wife alone. This error has come under consideration in the cases of *Simpkins v. Eddie*, 56 Vt. 612, and *Witters v. Sowles*, 28 Fed. Rep. 121, and the inequality and solecism of the present law illustrated.

4th. We note in No. 140 of the Acts of 1884, relating to "the property rights of married women," an exception, which seems to defeat in great part the just and kindly purposes of the statute. The second section reads—"All personal property and rights of action acquired by a woman before coverture, or acquired in any manner during coverture, *except by her personal industry or by gift from her husband*, shall be held to her sole and separate use," &c. This exception makes the law more onerous to the wife than it was before, for the gifts of husband to wife of the gains of her personal industry, and other direct gifts to her separate use, have before this statute been protected to her in equity, and to some extent at law, where the transaction was not done in fraud of creditors. This exception in the act seems to us to be without reason, and against reason, and should be repealed. As it now stands, and as such gifts are not to the sole and separate use of the wife, it would seem, and such is the implication of the act, that the husband might recall them, and so defeat his own gift.

5th. We recommend that the words *county court* should be substituted for the words "supreme court," where they occur in section 2329 of the Revised Laws. Such change would make this section conform to section 2328 upon a like subject, avoiding the confusion of application to different courts, and according to the divorce court a jurisdiction which properly belongs to

it. Section 2329 was enacted when the supreme court had jurisdiction of divorces, and hence the use of these words. When, in 1870, this jurisdiction was transferred to the court, it should have carried with it the change recommended.

6th. The delay in announcing decisions of cases heard in the supreme court is a fault that needs correction. Where the case heard is left *with the court*, and taken away by a single judge for consideration, the apprehension, if not the real danger, is that the personal equation will unduly affect or control the decision, and that in the end, and owing to the difficulty of getting the full bench together again for further consideration, if the parties, after great delay, get a decision, it may not be the unqualified decision of the full court. Without impeachment of the court or any one of the judges, it may be safely said that it would be more satisfactory to suitors, the profession, and the public that some regulations, having even the force of legislative enactment, be adopted to prevent or end this mischief.

Your committee have, therefore, prepared and recommend the passage by the legislature of an act, as follows :

AN ACT TO SECURE AND EXPEDITE THE DECISION OF CASES HEARD IN THE SUPREME COURT.

It is hereby enacted by the General Assembly of the State of Vermont :

SEC. 1. All the judges of the supreme court, on the first Tuesday of January in each year following the general term of the supreme court, unless an earlier day be appointed by the chief justice, shall assemble together at a place appointed for the further consideration and final determination of all the cases heard, but not decided, at such general term, and shall there make a final decision and disposition of the same. There shall also at the same time be determined and decided, so far as may be, all other causes left with the court undecided at any term of the supreme court.

SEC. 2. This act shall take effect from its passage.

7th. The law of chancery practice now is that events and matters which have accrued since the filing of the bill cannot be availed of without the bringing of a supplemental bill. The labor, expense and probable delay of this are not inconsiderable, involving a restatement of the original case and history of the litigation, with the addition of the supplemental matter, a new service, answer, &c. A like embarrassment once existed where any change of parties happened by reason of death, marriage, &c., for which a bill of revision was the remedy. This has been since remedied by the simple suggestion of the change and the entry of the new party. A like cheap and convenient substitute for a supplemental bill would be to allow such supplemental matter to be introduced by way of amendment to the original bill, giving leave to the defendant to make answer thereto as may be necessary. To this end we recommend for adoption by the judges an amendment to Rule 11 in chancery, as follows:

“Rule 11 of the Rules of the Court of Chancery, adopted November 20, 1885, shall be so construed as to allow the amendment of bills by the introduction of new events or matters which have accrued since the filing of the bill in cases proper therefor and which might otherwise be availed of by a supplemental bill.”

DANIEL ROBERTS, }
L. H. THOMPSON, } *Committee.*
JAS. C. BARRETT, }

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VERMONT
BAR ASSOCIATION.

CONSTITUTION, MEMBERS, PROCEEDINGS,
PAPERS, AND ADDRESSES.

1887.

VOL. II. No. 2.

BARRE:
THOS. H. CAVE, BOOK AND JOB PRINTER.
1888.

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WALDO BRIGHAM, Hydepark.....Lamoille, 1857.
JOHN J. ENRIGHT, Burlington.....Chittenden, 1883.
WENDELL P. STAFFORD, St. Johnsbury.....Caledonia, June, 1882.
AUGUSTUS PINGRY HUNTON, Bethel.....Washington, April, 1837.
ROME G. BROWN, Montpelier.....Washington, October, 1887.
HOMER CHARLES ROYCE, St. Albans.....Franklin, October, 1887.
PATRICK J. FARRELL, Newport.....Orleans, October, 1887.
W. L. BURNAP, Burlington.....Chittenden, Sept., 1866.

TREASURER'S REPORT.

HIRAM CARLETON, *Treasurer,**In Account with the VERMONT BAR ASSOCIATION:*

1886.	DR.		
Oct. 27.	To deposit in Burlington Savings Bank.....	\$323 97	
	deposit in Mont. Sav. Bank & Trust Co..	427 03	
	cash received for annual dues, admission		
	fees, and for binding reports.....	267 40	
	interest on deposits.....	26 95	
			\$1045 35
1886.	CR.		
Oct. 27.	By paid annual banquet.....	\$135 00	
	printing	23 99	
	J. D. Clark, binding 150 copies Vol. I. re-		
	ports.....	60 00	
1887.			
Oct. 26.	balance in Burlington Savings Bank	338 68	
	balance in Mont. Sav. Bank & Trust Co..	488 68	
			<u>\$1045 35</u>

ASSETS, OCTOBER 26, 1887.

Cash deposited in Burlington Savings Bank to the credit of Hiram Carleton, Treasurer, book 9943.....	\$338 68
Cash deposited in Montpelier Savings Bank & Trust Co., to the credit of Hiram Carleton, Treasurer, book 5442	488 68
Total Assets.....	<u>\$827 36</u>

SUMMARY OF PROCEEDINGS, 1887.

The association met at the court house in Montpelier pursuant to notice, and were called to order by President C. H. Heath at 7.30 P. M. The president delivered his annual address upon the subject of Marriage and Divorce. Roswell Farnham contributed some sketches of the courts and bar of Orange county. N. L. Boyden read a memorial paper upon Philander Perrin. The Committee on Legal History made a report through Asa M. Dickey, which was ordered to be printed with the proceedings. Mr. A. M. Dickey moved that when adjourned, it be to meet at the same place at 2 P. M., October 26; carried. On motion of Mr. Ide, the report of the special committee on mesne and final process was made the special order for the meeting to be held at 7 P. M. at the Pavilion. Mr. Brownell moved that the managers be directed to provide the annual banquet on the first evening of the general term. On motion of Mr. Ide, ordered to lie. Mr. Farnham called up the motion of Mr. Brownell, as to the time of holding the annual banquet, and offered the following amendment to the constitution :

Notice is hereby given that a motion will be made at the next annual meeting of the association to amend Section XIV. of the constitution so that the annual meeting may be held at any proper hour during the day named in said section.

Mr. Carleton submitted his report as treasurer, showing the assets of the association to be \$827.36. Accepted.

Elihu B. Taft offered the following amendment to the constitution :

Article XIV. of the constitution shall be changed so as to read as follows : There shall be an annual meeting of the association held at Montpelier, commencing at 2 o'clock, P. M., of the first day of the general term of the supreme court ; or, in the absence of such term, at 2 o'clock in the afternoon of the fourth Tuesday in October, and such adjourned or special meetings as the association or the managers shall determine.

Kittredge Haskins offered the following amendment :

That article XVII. be amended by striking out the words, "in connection with the annual meeting," and inserting in lieu thereof, "on the evening of the first day of the annual meeting."

E. F. Brownell offered the following amendment :

It is hereby moved that article XXV. of the constitution be so amended that the second clause shall read as follows : The annual dues of members after the year of their admission, shall be one dollar, and shall be payable to the treasurer in advance at or before the annual meeting.

Mr. Boyden moved that a committee of one from each county, so far as represented, be appointed by the chair to nominate officers of the association for the year ensuing. Carried. The committee made a report, which was accepted.

Mr. Noble offered the following resolution :

Resolved, That the secretary be instructed to sell one bound volume of the proceedings and papers of this association to any member who cannot produce the annual pamphlet, upon payment of one dollar to the treasurer.

Mr. May offered the following motion :

Moved that the secretary be instructed to present one bound copy of the proceedings of this association to each of following institutions : The Vermont State Library, The Vermont Historical Society, The University of Vermont, Middlebury College, Fletcher Free Library, Norwich University.

Mr. George W. Harman, for the committee to nominate officers for the ensuing year, presented a report, which was, on motion, ordered to lie.

The secretary was directed to notify all officers of their appointment and to send to each member a list of the officers of the association.

On motion of Mr. Ide, the managers were instructed to arrange for half fare for the annual meeting of the association, and that the secretary give notice in the call for the meeting that such arrangements have been made.

The report of the special committee on mesne and final process, made the special order, was taken up and discussed by Daniel Roberts, H. C. Ide, and others, and Mr. Ide moved to amend the title to the bill by striking out the words, "mesne and final process in civil cases," so that it will read, "An act regulating and providing remedies supplemental to execution," and by striking out the last seven sections of the bill. After discussion of this proposed amendment by J. C. Baker, Kittredge Haskins, H. C. Ide, L. H. Thompson and G. W. Harman, Mr. Harman moved that the motion be ordered to lie, and that the whole matter be referred back to the same committee to perfect the bill, Mr. Ide being added to the committee. Carried.

Mr. Stanton, for the committee on admissions, made a report, and the same was accepted.

On motion, the candidates for admission to the bar were invited to the banquet as the guests of the association.

Mr. Harman offered the following amendment to the constitution :

George W. Harman gives notice that a motion will be made for a change in the constitution so that the officers of the association shall enter upon the performance of their official duties on the second day after the evening of the annual banquet.

The report of the committee on nominations was then called from the table, and the persons named by the committee were elected to the positions for which they were nominated.

The president submitted his list of standing committees.

On motion of Mr. Noble, the thanks of the association were tendered to those furnishing papers, and a copy of the same was requested for publication.

The secretary was directed to send a bound copy of the proceedings to each honorary member residing without this state.

The committee on admissions submitted a report, and the same was accepted, and at 2.30 P. M., October 27, the association was adjourned without day.

ADDRESS OF PRESIDENT HEATH

— UPON —

MARRIAGE AND DIVORCE.

Gentlemen of the Vermont Bar Association:

I suggest that no single title in the law has since the year of grace 1850 been the object of so much discussion and has been the subject of so much solicitude and criticism as "Marriage and Divorce." This discussion and criticism has, however, been conducted, largely, outside of our profession. The press, secular and religious, has given it much attention. The pulpit has been particularly vehement; and synods, conventions, conferences, sessions, and other associated religious bodies, have debated and resolved, and have in some instances undertaken to correct, and, by direct active measures, to withstand and amend what they with very great apprehension, regard as a great, impending danger, threatening to remove and utterly destroy the substructure of all human society and so to topple the superstructure down into complete ruin. This apprehension has been so grave that associations have been formed for the express purpose of correcting public sentiment, of appealing to the legislature, of quickening the judicial conscience, and of on the whole bringing the world back in this behalf, to the good old state in which our fathers were.

It has seemed good for me to consider for the short time allowed me in this meeting, some of the causes of and reasons for

this state of things, so as above complained of. That a great change has occurred and is now occurring in these matters, no candid observer can deny. That there are abuses and evils incident thereto and springing therefrom, can be confidently affirmed. But whether the change, on the whole, tends upward or downward, or whether the apparent abuses and evils are signs of growth,—sound, strong, sure and progressive,—or of the death and decay of the body politic, is a question which I affirm has two sides ; and it may, after all, be that the aforesaid apparent evils and abuses are significant marks of gain and increase to the mass of mankind and signify a higher rather than a lower standard of morals, and of a better rather than a worse state of society. The main subject of complaint has been the increase of and frequency of divorces ; and it is sometimes charged that this fact indicates an increasing laxity of morals on the one hand ; and also that it tends to accelerate such increase, to grow on the evil food it feeds on.

Now, it will be noticed that the granting of divorces has always been permitted by every government in the world ; and in almost every such government legal separation by and between husband and wife has been accorded with much greater facility than in this state. The good Hebrew would write his bill of divorce on his own motion. The cultivated Greek or the noble Roman was not greatly hindered in such behalf. I think I am correct in saying that it was not until the holy Roman church, in advancing its power in and over the world, undertook to make and did make marriage a sacrament, and did undertake to control, in and by its ecclesiastical courts, the severance of the marriage tie, that the great stringency in granting divorces began to prevail, and, incident thereto, the divorce *a mensa et thoro* began to come into practice ; which limited separation began to be and was a necessity, because no power could keep two persons, man and woman, together in wedlock against the persistent will of either. The diligent student of the history of the middle ages and since will be impressed with the utter inadequacy of the church, reinforced by the secular power, to ac-

compish the end which was then sought and now debated in this behalf. But it is not with the long ago with which I wish to deal, but with our own and recent times.

The causes for divorce in Vermont have not been materially changed since the foundation of the state, except by adding the cause arising out of sentence and confinement in the state's prison for three years or more, which statute was passed and became law November 10, 1836; although by the act of November 7, 1805, the court might, in its discretion, in the case of intolerable severity, limit the divorce to separation from bed and board. The causes in Vermont are almost identical with the causes in our sister states, though some of them include habitual drunkenness among the number.

The proceedings for divorce, in court, have been quite uniform from the beginning of government in this state, down to 1870, when the jurisdiction was taken from the Supreme court and given to the County court. The rules of evidence have in like manner been substantially the same as now, ever since we had a court, saving that by the act of 1852 the parties to a cause or contract in issue, subject to the exceptions named in said last-named statute, became competent witnesses, but not in divorce causes, and yet the statute of witness of 1852 seems broad enough to authorize the giving of evidence by the parties in such cases; and saving, too, the fact that up to said transfer of jurisdiction the testimony must have been taken in writing. I am aware that at the time of such change of jurisdiction it was alleged, as I then thought and now think, wrongfully, that the Bar, by reason of the method by which the proof was prepared for the trial, was guilty of frauds, to which could be attributed some of said alleged frequency; and it was argued, if the causes should be removed to the County court for trial and the witnesses should be called to testify in open court, under the searching eye of the judges of that court, that the frauds would be, *ipse facto*, prevented. The change was made, but the anticipated results of improvement did not follow; but rather, because the County court sat twice each year, and being a court nearer the people,

and the witnesses and sometimes the party obtaining the personal sympathy of the court, as it were by a personal appeal, the number of bills granted, increased in fact. So that the great increase of divorces cannot be attributed to the Court, the Bar, or the Legislature. It will also be noticed, that such increase began between 1850 and 1860, and was not very noticeable before the first-named date; that the number and frequency grew in and after the War of the Rebellion; that it has fallen off somewhat but not largely since 1870 or 1875. Said increase of causes might have been safely predicted by any one considering the natural results of the fact that 30,000 men, married or of marriageable age, were taken out of the state of Vermont and continued away from their homes and families more or less for four years. Numerous instances would of course occur, which would demand the attention of the Court. The maxim "*inter arma silent leges*" would and did prevail in more senses than one; and the irregularities of army life on the part of the men would be felt after the immediate cause thereof had been ended and men had returned to the pursuits of peace. So we may well see that for a period of time succeeding the scene at Appomattox the condition was abnormal, and that an impulse would be felt during such period in the home community which would continue for a while; but it seems to me that such special influence had spent and did spend itself before 1875, and that we cannot now look to such cause for a sufficient reason for our alleged difficulties.

It has been rather obscurely hinted that the public morals have declined and are at an ebb, especially in regard to the social evil, so called. To this I cannot accede. Bastardy is less frequent than formerly,—at any rate, in the central portions of the state,—and quite a per cent of such causes arise among those of recent immigration into the state, among whom there arise few divorce cases. Indeed, a large per cent of the divorces occur among the descendants of the old New England stock, which ended its immigration as early at 1692, when William and Mary were firmly seated on the English throne.

Again, there is not now, I think I can safely say, anywhere in this state such a state of things prevailing as to require the enactment of such a statute as the so-called "Bed Blanket Act," passed in 1787. The case of "The Holy Rollers," which progressed under the name of religion, and which took considerable of the time and attention of the court in Caledonia county; the Newbury case in 1825, which also proceeded under the name of religion, are instances of degradation in public morals not now existing in the state. And after patient study I am well persuaded that the condition of the family, in this behalf, is better now than at any former period in our history as a distinct political body; and better than in England at the present time, if the charges recently made in the Pall Mall Gazette, and the developments in certain divorce cases there in which noble Lords and Members of Parliament were implicated, and the late enactments by the British Parliament raising the age of legal consent, are to be taken as a fair indication of the actual condition of society there.

I assert that society moves forward with more regularity to-day than it did from 1820 to 1850; that men meet their obligations with greater certainty; that the churches and all religious institutions are better sustained and supported; that there is greater kindness and charity in families, neighborhoods and schools; and that in and during the period last above named, there is, indeed, less of all kinds of crime, if we except certain crimes of violence, which last, I think, proceed in some considerable degree from the war impulse and from recent immigration; and it would be very strange that this matter now in hand should be an exception to the general rule. So I cannot say, or think, that the things alleged as to frequency of divorces owe their origin to an increased or increasing laxity of public or private morals. Indeed, it is not claimed that the moral or religious status of the community has declined, in general, by many thoughtful persons; by few only, except incorrigible pessimists who never see anything ahead only impending, swift-coming ruin.

Another fact, significant but not determinative of the main question, is that a large proportion of the petitions are preferred by women. That is to say, the woman appears in court as the party claiming to be aggrieved and is the advancing and aggressive party. The husband commonly either does not come into court at all, or, if he comes, he is the resisting party; and oftentimes this resistance is promoted by the question, How shall the property be divided? or, Who shall have the custody of the children?

If we look to the origin of and fundamental idea of marriage as an institution, that is, if we undertake to examine the philosophy of it, we shall find ourselves confronted with some curious facts. We shall discover that as an institution, marriage in and among primitive peoples seems to originate in the capture, by force, of the wife by the husband, as in the case of the Tartars, who now preserve the form of a chase and capture as a part of the wedding. Albeit I make no doubt but the lady is in the end really caught by the one she prefers. It is tolerably plain that the rape of the Sabine women by the gallant young Roman warriors was not wholly free from this idea, for you will remember that the women were very readily reconciled to their new situation.

Or, second, by the purchase of the wife by the husband, which proceeding is exemplified in the customs of the North American Indians and by the "Dos" of some highly civilized nations, a remnant of which, perhaps, still remains in the Common Law in the dowry and in the marriage settlement. At any rate, the idea is such, that with all the primitive peoples the position of the wife is subordinate. The harem was and is now transferred by capture in war, and sometimes descends to the heir with the estate. In the civil law the wife was "*sub potestate*," or, as the common law puts it, was under "disability." But our own law has always placed her in an inferior position. Formerly, and until March, 1822, she did not, on the decease of the ancestor take so much of the estate as did her brothers, and the eldest son had, and even now has, some preference in the

right to administer on the father's estate. She was and is subordinate to her male relatives in her political rights; and formerly, say until after 1840, she was much restricted in the employments she might engage in for livelihood. Indeed, she was much dependent, and was so universally regarded. It was not thought modest or proper for her to engage in a large number of trades and occupations which she may now seek and engage in. Her wages in such employments as she might fittingly enter upon, were very small in comparison with the wages of her brothers for the same length of time and the same kind and amount of labor. I wish to make it very plain that she was in many a way placed much below her male companions. She was schooled in separate schools, for the most part, except in the common schools; and it was thought a thing impossible that she could have the advantages of the colleges. The whole atmosphere was, as to her, repressive, and, strangely enough, it was only one branch of the Protestant church which gave her, in theory, an equal right in any public organized political or religious body. Between 1840 and 1850 a great change was begun; the girls began to be put into the same schools with their brothers and into the same classes, and to pursue the same studies and take an even-handed part in debates, in recitations, and, in fine, in all the various phases of school life in all the higher schools and seminaries of learning below the colleges and universities; she began to feel her strength, and men began to recognize it also; she struggled and often won; she began, in fine, to have the same ideas which her brothers had, and very soon she would begin to exert them. The legislative bodies of all the common law nations began, too, to feel the same impulse, and in 1846 Lord Campbell's act became the law of England; the homestead laws began to be multiplied; and so on from that day to this, the law has been steadily advancing in her behalf as to property rights and personal rights towards an equality with men; so we may well realize what Mr. Kent, now one of the professors in the University of Michigan, some two years since said to me,—that the law in this matter had

been changing so rapidly that he had been compelled to completely rewrite his lectures, to be delivered in that university, on the rights of married women.

So, then, I am impelled to this opinion: that this oft recurrence to the court is not an evil, *per se*, but only an indication of the great revolution which is gradually, swiftly and irresistibly rolling onward; effectually and certainly modifying and readjusting the relative status of the sexes in all their legal relations towards and with each other, bringing along, indeed, many an instance of temporary abuse, as a river in flood brings along drift-wood, to be occasionally lodged on its banks, disfiguring the meadows and seeming to destroy the fruits of the husbandman and sometimes sweeping away the bridges and landmarks; but on the whole, enriching its banks with its fertility, bearing in its current many a good ship, deeply laden with the future good of mankind, on to the broad sea, ever so much broader than the river, on which shall be, in good time, realized the full enjoyment of the absolute rights of all persons with all persons, howsoever placed or situated. It seems to me that no restrictive legislation can arrest this change; that no exhortation can effect a backward flow. It was attempted in 1870 to arrest this movement by the change of jurisdiction; again, in 1878, by No. 16 of the Session Laws of 1878, entitled "An act regulating divorces"; again, by No. 94 of the Session Laws of 1884, which compelled a continuance of each such cause one term, entitled, "An act to diminish the frequency of divorces," section 2 of which nobody could construe and which was repealed in 1886; by No. 69 of the Session Laws of 1886, which provides that the State's Attorney shall appear for the libellee in divorce cases, and which is as yet wholly inoperative except to increase the emoluments of a half-paid state officer;—each of which have made no appreciable diminution in this behalf, except the one requiring the continuance, and this only delayed the crop for six months. An eminent judge, now retired from the bench, used to lecture the Bar, in each case, and then to grant the bill, and would endeavor, in strict administration of

the law, to find reason for refusals ; but in this he did not succeed, only so far as to bring it about, that the County court was petitioned against, by the aggrieved party, in the Supreme court, to show cause why a peremptory mandamus to dismiss a petition for divorce should not issue. *Vide Foster v. Redfield et al.*, 50 Vt., p. 285. He failed, for a while, to see, that the *Vox populi* becomes, in the highest sense, at times, the *Vox Dei*.

It therefore remains for government, whether in the Legislature or in the Judiciary, by a wise conservatism, to hold the reins steady, until the new status shall be realized ; to endeavor to guide, not to prevent ; to adjust, not to stop ; to build, not to tear down ; and not to expect to prevent the river from flowing onward by building a dam of bulrushes across its current ; —but rather, to endeavor to conduct the onflowing waters, in an even channel, to its natural usefulness as a propelling and fertilizing power ; all the while to be thinking, also, that probably we are building, under God-given laws, better than we know ; and that, with laws, institutions and customs, as well as with plants, animals, and all things animate and inanimate, the law of the survival of the fittest prevails.

REPORT OF COMMITTEE
— ON —
HISTORY AND BIOGRAPHY.

TO THE BAR ASSOCIATION OF 1887:

Your committee would respectfully report that they have learned through the county clerks of the various counties that the following named members of the bar have died during the last year, namely :

HON. LUKE P. POLAND of Caledonia county. He is so well known that we do not deem it necessary to state the positions of honor that he has occupied, for he was a man of national fame as a lawyer, jurist and statesman, and in all places reflected honor upon his native state.

BRYANT HALL of Swanton was admitted to the bar at the September term of 1843, and died during the September term of 1886. He was a partner of Hon. H. A. Burt, and was in full practice at the time of his death.

HENRY E. SEYMOUR of St. Albans, Vt., was admitted to the bar at the April term in said county in 1839, and died September 26, 1887. He had not been in the practice of his profession for several years prior to his death.

RICHARD F. PARKER of Lamoille county was admitted to the bar at the December term of said county, 1861. He immediately commenced the practice of his profession in the town of Wolcott and continued it there until his death, which occurred May 22, 1887. He represented his town in the legisla-

ture in 1865, 1866, 1867, and again in 1870. He was elected a delegate to one of the constitutional conventions. He was state senator in 1878. He was elected by the legislature to the office of railroad commissioner from 1866 to 1869 inclusive.

HARVEY BUTTON of Wallingford, Rutland county, was born at Clarendon in the year 1800. He was admitted to the bar in 1826, and practiced his profession in Wallingford until his death, which occurred October 13, 1886. He held the office of judge of probate for many years, was a man of excellent good sense and highly respected.

JAMES P. BARRETT was born at Woodstock, Vt., December 26, 1851. He was the son of Judge Barrett; was a graduate of Dartmouth College; was admitted to the Windsor county bar in 1877, and died February 15, 1887. His death cast a gloom over the entire profession of the state. He was one of the finest lawyers of the state of his age.

PHINEAS CHAMBERLAIN was a native of Bath, N. H. He studied his profession with ex-Governor Farnham of Bradford, was admitted to the Orange county bar in 1877. He was a partner of Governor Farnham from 1878 to 1886. He went to Minneapolis, Minn., in August, 1887, with the intention of establishing himself in the business of his profession in that place. He died September 20, 1887, aged 35 years.

HON. JABEZ D. BRIDGMAN was a son of Dr. Benjamin H. Bridgman of Grafton, Vt., where he was born June 10, 1828. He received an academic education, and when about the age of twenty he commenced the study of the law in the office of Messrs. Walker & Kellogg at Saxtons River, Vt., and continued his studies in the office of Mr. Walker at Bellows Falls, Vt., and was admitted to the bar of the Windham county court at its April term, 1851; was admitted to practice before the supreme court in September, 1854. Upon his admission to the bar, he opened an office in Bellows Falls, where he practiced his profession until stricken with apoplexy two days prior to his decease. He died April 7, 1887. He represented the town of

Rockingham in the Vermont legislature the years 1857 and 1858, and was a state senator from Windham county in 1880-1. He was state's attorney for said county for the two years ensuing December 1, 1860, and was a justice of the peace for many years. September 29, 1862, he was appointed and commissioned adjutant of the 16th regiment of Vermont volunteers in the war of the rebellion, but, owing to ill-health, he resigned January 12, 1863, returned home, and again took up the duties of his profession.

AHIMAN LEWIS MINER, son of Deacon Gideon and Rachel Davison Miner, was born at Middletown, Vt., September 23, 1804, and died at Manchester, Vt., July 19, 1886, being nearly 82 years of age. He received only a common school and academic education, but which qualified him to become a very efficient and popular teacher in the common schools of that day. He studied law in the offices of Mallory & Warner of Poultney, Benjamin F. Langdon of Castleton, and Royce & Hodges of Rutland, where he was admitted to the bar in Rutland county at the April term, 1832. He soon after established himself in practice at Wallingford, where he remained for three years, and in 1835 removed to Manchester, where remained until his death. He was for many years associated in practice with Leonard Sargeant, afterwards lieutenant-governor of the state. Mr. Miner soon acquired a large practice and great popularity as a trier of causes, especially before a jury, where his readiness in grasping the facts of the case and his uncommon readiness and accuracy of memory of details came into effective use. His manner was earnest and persuasive and apparently ingenuous and candid, but ingenious withal, which made him a hard antagonist to encounter before a jury, who were apt to be his friends. Between 1841 and 1872 (31 years) there were less than half a dozen jury cases brought before the court at Manchester in which he was not employed on one side or the other. In 1869 there were forty-eight litigated cases set for trial by jury at the June term, in all of which Mr. Miner was engaged as counsel. His excellent personal character, as man and citizen, amiable, kindly and

honest, were great elements in his popularity and success in his professional and official life. Mr. Miner held many civil offices, and cannot be said to have failed of attaining any he desired. In 1836 and 1837 he was clerk of the Vermont house of representatives. In 1838 and 1839 he represented Manchester in the legislature, and in 1840 was senator from Bennington county. He was again elected representative in 1846, 1847, 1853, 1861, 1862, 1865, 1866, 1867 and 1868, making twelve years of service in the legislature, during eight years of which he was chairman of the judiciary committee. In 1850, Mr. Miner was elected as a Whig member of the Thirty-second Congress from one of the then four districts of the state. He was register of probate for the district of Manchester for the years 1835, 1838, 1839, 1840, 1841, 1842, 1857 and 1858, and was judge of probate from 1846 to 1849 inclusive. He was state's attorney for Bennington county in 1843 and 1844, and again in 1863, 1864 and 1865, and was justice of the peace for more than forty years. In 1836 he received from Middlebury College the honorary degree of A. M. Mr. Miner was twice married,—first to Fanny Adams Beaman of Hampton, N. Y., in October, 1832, by whom he had five children ; and in March, 1853, to Susan S. Roberts of Manchester, by whom he had three children. Three of the eight children survive him. In one respect the life of Mr. Miner should serve as a cautionary warning to his professional brethren surviving him. It is, he did not duly avail himself of his advantages in providing for his family an adequate pecuniary independence. He worked for small fees, when not gratuitously, and failed to collect what he earned. His business done would have been a large and honest fortune, if properly husbanded.

A. M. DICKEY,
SENECA HASELTON.

PHILANDER PERRIN.

PAPER READ AT THE ANNUAL MEETING, 1887, VERMONT BAR
ASSOCIATION.

By N. L. BOYDEN.

Having had less than a week's notice that a paper would be expected of me at this time on the life of Hon. Philander Perrin, it is with some diffidence that I have attempted to comply with the demand of the president of this association; but having been associated with him of whom I speak more, perhaps, than any other member of this association has been, it is, perhaps, fitting that this duty should fall upon me, and I accept the trust less reluctantly from my great love and respect for the man, my great respect for those he has left behind, and my desire that his memory may be perpetuated among our records.

The subject of this sketch was born on a farm in the southern part of Randolph, two and one-half miles south of Randolph Center, May 18, 1808. He was the second son of Noah and Olive Perrin. He had four brothers and three sisters. Two of his brothers and one sister are still living,—one of his brothers in Minnesota, one in Ohio, and the sister in New York. Noah Perrin, his father, died January 20, 1856, aged 85 years, 11 months, on the same farm on which he was born.

His boyhood and early life, like most others', was comparatively uneventful; but I am told that he was slender and weakly

and had a distaste for farm labor, and was not strong enough to perform manual labor with success.

He early showed an earnest desire to obtain an education, and, owing to his frail constitution and feeble health, he was allowed to obtain such an education as the limited means of his father permitted. He obtained as much education as he could at the district school in his own district and then took an advanced education in Orange County Grammar School, then under the charge of that accomplished scholar and educator, Rufus Nutting. He taught school winters and was very popular as a teacher.

After graduating from the Orange County Grammar School, he commenced and pursued his legal studies with Hon. William Nutting, called in his later years "Father Nutting." He was admitted to the Orange county bar at the June term, 1836. During his academical and legal studies, he boarded at home on the farm and walked the distance of two and a half miles each day to attend upon his studies.

On being admitted to the bar, he at once opened an office at Randolph, and commenced the practice of law, and soon took a high rank among the lawyers of his time. Practicing in the same town with his preceptor, William Nutting, he was usually on the opposite side of the cases in that vicinity. He was very cautious in taking cases, and would often get the better of Father Nutting; but they were always friendly, and the "beating" left no sting. After a close trial at one time, Father Nutting's side was badly beaten, and he facetiously remarked, "See what lawyers I make out of my students." Indeed, Father Nutting looked with interest and pride upon the rising lawyer.

We of later years knew him as Judge Perrin. His contemporaries and associates for many years were William Hebard, Edmund Weston, William Nutting, Levi B. Vilas, J. P. Kidder and John B. Hutchinson of Orange county, Andrew Tracy, Peter T. Washburn, A. P. Hunton, Paul Dillingham and Lucius

B. Peck in other counties. In later years many of the lawyers of Orange, Windsor and Washington counties were associated more or less with him.

Opposed to and associated with such lawyers during his more active practice, he became a close student of the law and a sharp and careful practitioner. He had a clear conception of the law and its application to the case under consideration. He studied and prepared his cases thoroughly, and had a very large practice. Within the memory of some of us he had more cases in Orange county court than any other lawyer. In the trial of causes in court he was severe with witnesses that he suspected of not telling the truth, and sometimes almost unmerciful in his attack upon their testimony. He was cautious with those that he believed were telling the truth when on the opposite side, careful not to give them too much prominence.

I entered Judge Perrin's office as a student in 1861 and continued with him until 1868, when, on the death of Hon. John B. Hutchinson, he moved to West Randolph. These were years of justice trials, and Judge Perrin, I think, had no equal here. He had a large fund of ready wit and good nature, and would often show great ability and tact in the management of his case. The people generally, so far as he was known, had great confidence in him, and it was extremely difficult for any lawyer to succeed against him in the justice court. When he tried these cases away from home he would often take Swift's Digest along with him, remarking that he could always find law there to fit his case.

- He was very industrious. He was no idler. Many times, after we had come from a justice court at two and three o'clock in the morning and after I had been up and taken my breakfast, I would go to the office and find that he had attended to his correspondence and was preparing another case. At one time I asked him why he worked so hard and took so much time in preparing a case for the justice court. He remarked in *his* own way, "Of course I know the law, but the boys think that they

know it, and I must be ready to teach them something—what the *law is*.” He often took more time in his preparation of a case for a justice trial than many lawyers take in preparing a case for the supreme court.

He was scrupulously clean and neat with his books and papers. When he was through with a book it was put in its proper place, and his papers were neatly filed and carefully laid away. He always knew where to find them. Unlike most lawyers, he was a good penman and disliked poor penmanship. After his death I sold his library, and there was scarcely a book that had a blot or stain upon it. Of course many showed wear and use, but they were remarkable in showing that they had not been carelessly and heedlessly used.

He was modest and unassuming in his manner, and quite diffident. He lacked confidence in his own ability. In the trials of his causes in the county court he would often call in others to assist in doing work, and hesitate to take an active part when we all knew he could do it better than any one else. Whenever he did enter into the direction of a case and assume the responsibility, he did it well.

But I think he excelled as a supreme court lawyer. Here he appeared to regain his confidence. He always thoroughly prepared his cases and had them ready. His preparation always showed great study and research, and usually a clear conception of the principles of law applicable to his case. He made no attempt at show or eloquence in his preparation, or to kill time and take up the time of the court in useless discussion; but he endeavored to convince by authorities, and to strive to win in a fair and honorable way. The supreme court was always pleased to listen to him, and he was regarded as a good supreme court lawyer. He tried his last case in the supreme court at the March term, 1882, Orange county, and it was one of the best preparations of that term, as some of the court now present will remember.

Judge Perrin was an honorable practitioner. We considered his word as good as gold. He did not hastily make agreements, but when he did make them they were made to stand. He had great respect and love for the members of his profession and the court, and rarely, if ever, spoke disrespectfully of either. He was very kind to his students and the younger members of the profession, as many can testify. None who came to him for advice or assistance was turned away in coldness. He was always ready to assist. Before he became hard of hearing he acted as auditor, referee, arbitrator and commissioner frequently, and, perhaps, more than any other lawyer in in the county. I am told that it was so before I knew him. His brethren and their clients had confidence, not only in his ability, but his integrity. He was quick to comprehend the points of the case,—took the testimony carefully, and weighed it fairly to all concerned.

He always lived in Randolph, his native town, and always had an interest in its welfare, and practiced law nearly half a century. Politically he was a Democrat, and there, as elsewhere, was always true to his convictions. Although he was not of the usually dominant party, yet he was personally popular, and was frequently called to places of trust and confidence in his town and county. He never sought office, but rather shrank from assuming any place of trust, or promotion. He was assistant town clerk many years for B. T. Blodgett; town clerk and treasurer from 1851 to 1855, when the Know Nothings captured the town; trustee of the United States deposit money for fifteen years; postmaster several years. He was state's attorney of the county one year, commencing December, 1847. This was the year that the railroad was built through West Randolph, and he had a large amount of criminal business to do, incident to those surroundings. He was register of probate for Judge Weston several years, and judge of probate in 1850, 1851 and 1852. In all these places, he discharged his duties with fidelity,—always faithful to the trust committed to

his charge. He was a member of the Episcopal church, and one of its officers for many years, and was unfaltering in its support and a constant attendant upon its service.

Judge Perrin was generous, even to a fault. Among the lawyers and in the community, he was always ready to do his part, and more than he was able to. He was too liberal to accumulate property. His charges as attorney were light. He scarcely ever charged a retainer, and his other charges were moderate. He was a poor collector for himself, and his good nature and kindly heart led him to sign notes and obligations with and for others, many of which he had to pay. He was a genial companion. He had a fund of good humor and ready wit, that rendered it enjoyable to be with him. The bar with which he was associated and the court miss his presence, his words of encouragement, his anecdotes, and his warm-hearted and generous greetings.

May 20, 1839, he was married to Hannah S. Egerton, daughter of William Egerton, who was a brother of Lebbeus Egerton. They had three children, two sons and one daughter. One son, William Egerton, served in the army in the War of the Rebellion, and died in New York, of blood poison, after the war closed. The other son, Frank Vilas, named by Levi B. Vilas, was for several years in the employ of the American Express Company at Springfield, Massachusetts, but on the accession of William Vilas to the cabinet he remembered his father's friend, and the son, and now he has a good position in the postal service. The daughter married J. H. Moulton, one of the firm of Moulton Brothers, who own the celebrated Green Mountain Stock Farm and about three hundred thoroughbred Jerseys. They live at West Randolph, and the widow resides with them.

Judge Perrin had been in feeble health, and after the fire at West Randolph of December 4, 1884, that destroyed his office, he determined to retire entirely from the active practice of his profession. He removed his books to his residence and did not again enter into practice, though he continued to make and

draw papers and was somewhat engaged in consultation and advice. The 6th day of February, 1885, he was stricken with paralysis that entirely paralyzed one side. For a time it was thought he might recover, but medical aid and kind and loving care could not avail, and on the 4th day of March, 1885, he quietly and peacefully breathed his last, in the calm and trusting faith that he adopted and had cherished for many years. His mind remained perfectly clear and unclouded to the last.

His remains were buried in his family lot at Randolph Center, in the same cemetery with other distinguished dead, with whom he had associated, Hons. Dudley Chase, William Hebard, William Nutting, and others, who have written their own histories in their lives.

ROBERT McKINLEY ORMSBY.

PAPER READ AT THE ANNUAL MEETING, 1887, VERMONT BAR
ASSOCIATION.

By ROSWELL FARNHAM.

Robert McKinley Ormsby, one of six sons of Dr. Joseph Ormsby, was born in Corinth, Vt., June 29, 1814. From his ninth to his fifteenth year he lived with Mr. Ezra Child of Bath, N. H., receiving there the advantages of a common school education. In 1831 he was a student at Bradford, Vermont, Academy, where he began to show some of the peculiarities of his original mind. He stood easily among the first scholars in certain branches, and even then showed some of his great facility in writing. Soon after, in 1833, he went to Massilon, Ohio, where he taught school for a while, though not with marked success. In 1836, he went to Louisville, Kentucky, where he became a student in the University in that city, and attempted to replenish his slender purse by writing for the daily papers. He then studied Latin, to which he afterwards gave a good deal of attention. At some time he acquired a fair knowledge of the French language, but whether while he was in Louisville or not, the writer cannot say. While writing for the daily press he prepared a series of articles that attracted the attention of Judge Marshall of that state, who enquired at the editorial office of the paper for the author. Upon becoming acquainted with Mr. Ormsby, he invited him to become a student at law in his office, and finally took him into his family, where he remained until he was admitted to the bar. Hon. Humphrey

Marshall and Tom Marshall were sons of Judge I. I. Marshall, of whom we are speaking, and, although older, were friends of their father's young student.

In 1842 Mr. Ormsby came to Vermont, on account of the sickness of his mother, and settled in the law business at Bradford, where he remained until 1866, when he removed to New York. During the first years of his residence in Vermont his practice was not large. He did the law business connected with the extensive operations of Mr. Asa Low and such other business as came to his hands without effort on his part, but he spent his spare time in studying his profession and such literary works of high character as were obtainable in a small country town. He gradually accumulated an excellent and quite extensive library of his own, both of law and miscellaneous works. His business increased from year to year until he had all that he could attend to. He never made it very profitable, however, for the reason that he was not careful about his accounts, but chiefly because of his generosity to his clients. No man ever appealed to him in the misfortune of defeat in an unsuccessful lawsuit without having his bill for services abated to the client's entire satisfaction. Nevertheless, Mr. Ormsby accumulated several thousand dollars before he went to New York. He never had an extravagant habit, unless his purchasing of books may be so classed.

During all this time his pen was never idle, but his productions being mainly for newspapers, little of the result of his labor is preserved. This practice, however, together with his natural ability, gave him a very remarkable readiness in expressing himself upon all subjects in the best and most forcible English. During this period he wrote a serial story for the *American Protector*, the newspaper then published in Bradford, entitled "Kritz Lemberg," which was afterward issued in book form. It was of no great literary value, and its author was hardly willing to acknowledge it in after years, and it is only mentioned here as showing the restless mental activity that beset the man.

He also prepared, at the request of Mr. Asa Low, a spelling-book, which had a very extensive sale. Several years later, in 1857, after the establishment of the state board of education, and when John S. Adams, Esq., was secretary of the board, the book was adopted as the text book of the state in spelling, and for five years was extensively sold and used throughout Vermont.

Mr. Ormsby came from Kentucky a decided Whig of the southern type, and when Daniel Webster was talked of for the presidency he threw himself into the canvass with the whole force of his powerful nature. He edited and published for a time the *Northern Enquirer*, a weekly newspaper, at Bradford, in the interest of Mr. Webster's nomination. But he was doomed to disappointment, as were so many of that great man's admirers.

At the time of the organization of the Republican party, Mr. Ormsby stood among the leading lawyers of the eastern part of the state, and as the editor of the *Enquirer* was an influential man in political circles. He had many warm friends and admirers, and had he seen fit to go into the ranks of the new party, where most of his old friends, the Whigs, went, he could have received any political promotion that he desired. But his convictions and party sympathies would not permit him to do this; yet he hesitated, as did many of the old Whigs, to unite with the Democrats, and he remained for several years in what was termed the Old Line Whig party in Vermont. During this time he was nominated as a candidate for state treasurer on the same ticket with Hon. John Wheeler of Burlington as governor, but neither of them, it is needless to say, were elected.

In 1859 he published "A History of the Whig Party," a book of 370 duodecimo pages. The sale of the book was not large, as it was the history of a party then practically dead, but it is full of interest and shows Mr. Ormsby's peculiar and original line of thought. Soon after this he drifted into the Democratic party, as did so many members of the Old Line Whig

party. His law practice continued to increase, and he was so well esteemed by his new political friends that in 1864 he was nominated by the Democrats as a candidate for Congress from the Second Congressional District of Vermont.

In 1857 he formed a partnership in the law business with the writer of this article, who had just completed his law studies with him, which lasted two years and a half; and, although they differed decidedly in political and other matters, yet their former friendship was strengthened, and continued of the warmest kind up to the death of Mr. Ormsby. He was one of the most genial, good-natured and obliging men that ever did business with another. Whatever happened, nothing ever disturbed his equanimity, and no difficulties ever discouraged him. His knowledge of the intricacies of the law was remarkable, and the court always listened to him with attention, for he generally had something new to say. However desperate seemed the condition of his case, he usually devised some way to extricate himself. He was not always successful, but his fertility of resource was extraordinary.

In 1857, September 14, Mr. Ormsby married Miss Lucy J. Murphy, a lovely girl of Bradford, daughter of Thomas Murphy, Esq. So long as he lived he found in her a most sympathetic and valued friend and wife in their domestic relations and in his literary labors. They had four children, two sons and two daughters, of whom only one survives, Edward Everett Ormsby, born in 1860.

In 1866 Mr. Ormsby removed his business to New York City, where he remained until his death, February 20, 1881. He resided, however, out of the city, and, for a few years and at the time of his death, he and his family lived on East Chester Hill, near the beautiful town of Mount Vernon, Westchester county, New York. In speaking of Mr. Ormsby after his death, the *New York Times* of February 22, 1881, says, "His introduction to the bar of this city was through Charles O'Connor,

with whom he was associated in the defence of Jefferson Davis. He was formerly a leading lawyer of Vermont, and was a man of decided mental power and an active philosophical political student, though not a political office-seeker. He wrote a history of the Whig party and was also the author of a work on the glacial theory."

After his removal to the city his interest in literary and scientific matters increased, and all his leisure time was devoted to study in that direction. He continued a frequent contributor to the press and in 1876 published a short poem entitled, "Darwin," being a conversation between "Christian" and "Philosopher." Of this poem the *Mount Vernon Argus*, a paper published in the town above referred to, says, "When the scientific and religious world trembled at the doctrine of Darwin and Huxley our lamented friend wrote and published his work, which will remain a perpetual monument to his memory, taking issue with these great scientists and disputing their theories. We quote the last two lines of the work above alluded to, where Mr. Ormsby uses this language:

'It is the true sphere of philosophy
To find out God and not ignore Him.'

With this we must conclude our words in memory of an old friend. Although at the time of his death he had not lived in Bradford for fourteen years, yet we all felt that an old citizen and friend had gone.

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VERMONT
BAR ASSOCIATION.

MEMBERS, PROCEEDINGS, PAPERS AND
ADDRESSES.

1888.

VOL. II. No. 3.

BARRE:
THOS. H. CAVE, BOOK AND JOB PRINTER.
1889.

OFFICERS AND COMMITTEES.—1888-9.

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P. K. GLEED, Morrisville.

Vice Presidents,

HENRY C. IDE, St. Johnsbury.

W. B. C. STICKNEY, Bethel.

KITTREDGE HASKINS, Brattleboro.

Secretary,

GEORGE W. WING, Montpelier.

Treasurer,

HIRAM CARLETON, Montpelier.

Managers,

P. K. GLEED, *ex officio*, Morrisville.

C. W. PORTER, Montpelier.

R. M. HARVEY, Topsham.

E. B. TAFT, Burlington.

CHARLES M. WILDS, Middlebury.

COMMITTEE ON ADMISSIONS.

Addison County.....	CHARLES M. WILDS, Middlebury.
Bennington County.....	GEORGE W. HARMAN, Bennington.
Caledonia County.....	ALEX. DUNNETT, St. Johnsbury.
Chittenden County.....	C. W. BROWNELL, Jr., Burlington.
Essex County.....	Z. M. MANSUR, Island Pond.
Franklin County.....	ALFRED A. HALL, St. Albans.
Lamoille County.....	WALDO BRIGHAM, Hyde Park.
Orange County.....	N. L. BOYDEN, Randolph.
Orleans County.....	JOHN C. BURKE, Newport.
Rutland County.....	P. R. KENDALL, Rutland.
Washington County.....	FRANK PLUMLEY, Northfield.
Windham County.....	EDGAR W. STODDARD, Brattleboro.
Windsor County.....	J. J. WILSON, Bethel.

COMMITTEE ON PROFESSIONAL CONDUCT.

GUY C. NOBLE, St. Albans; L. W. REDINGTON, Rutland;
W. P. DILLINGHAM, Waterbury.

COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

DANIEL ROBERTS, Burlington; L. H. THOMPSON, Irasburgh;
HENRY C. IDE, St. Johnsbury.

COMMITTEE ON LEGAL HISTORY AND BIOGRAPHY.

ASA M. DICKEY, Bradford; THOMAS O. SEAVER, Woodstock;
SENECA HASELTON, Burlington.

NEW MEMBERS.

FRED. L. LAIRD, Montpelier. General Term, October, 1887.
EZEKIEL A. ASHLAND, St. Albans. . . General Term, October, 1887.
M. H. ALEXANDER, Jericho. Franklin County, April Term, 1883.
D. G. FREEMAN, Swanton. Franklin County, Sept. Term, 1876.
HOSEA MANN, Jr., Wilmington. . . . Windham County, March Term, 1882.
A. AUG. BUTTERFIELD, Jacksonville. Windham County, April Term, 1867.
WILLIAM H. BLISS, Middlebury. . . Orange County, Dec. Term, 1877.
EDWARD DANA, Rutland. Rutland County, — Term, —.
JOSIAH GROUT, Derby. Orleans County, — Term, 1865.
CURTIS S. EMERY, Chelsea. Orange County, Dec. Term, —.
CHARLES P. TARBELL, So. Royalton. Orange County, — Term, 1870.

MEMBERS,

WITH RESIDENCE, AND COUNTY AND TERM OF ADMISSION TO BAR.

ADAMS, HENRY C.	St. Albans.	Franklin, December, 1854.
ALFRED, FRANK E.	Newport.	Franklin, September, 1876.
ALLBE, ALBERT M.	Springfield.	Windham, April, 1843.
BAKER, JOEL C.	Rutland.	Rutland, March, 1862.
BALDWIN, F. W.	Barton.	Lamoille, December, 1872.
BALLARD, GEORGE A.	Fairfax.	Franklin, September, 1861.
BALLARD, HENRY	Burlington.	{ Albany, N. Y., May, 1863.
BARRETT, JAMES	Rutland.	{ Chittenden, September, 1863.
BARRETT, JAMES C.*	Rutland.	Windsor, December, 1840.
BARRETT, RUSH P.	Rutland.	Windsor, May, 1877.
BATES, HENRY C.	St. Johnsbury.	Windsor, December, 1878.
BATCHELDER, JAMES K.	Arlington.	{ Coos, N. H., Nov., 1868.
BATCHELDER, WILLIAM	Windsor.	{ Orleans, June, 1866.
BELDEN, HENRY C.	Min'apolis, Minn.	Bennington, June, 1866.
BINGHAM, M. A.	Essex Junction.	Windsor, May, 1872.
BISBEE, EDWARD W.	Barre.	Caledonia, December, 1863.
BLODGETT, HARRY	St. Johnsbury.	Lamoille, May, 1868.
BOLLES, FRANCIS A.	Bellows Falls.	Washington, Sept., 1871.
BOYCE, OSMAN B.	Barre.	Caledonia, June, 1873.
BOYCE, WILLIAM A.	Barre.	Windham, April, 1872.
BOYDEN, NELSON L.	Randolph.	{ Albany, N. Y., March, 1871.
BRIGHAM, WALDO	Hydepark.	{ Essex, September, 1871.
BRIGGS, GEORGE	Brandon.	Washington, March, 1869.
BROMLEY, JEROME B.	Castleton.	Orange, June, 1865.
BROWN, ROME G.	Min'apolis, Minn.	Lamoille, 1857.
BROWNELL, C. W., JR.	Burlington.	Rutland, September, 1868.
BUCK, MYRON	St. Albans.	Rutland, September, 1849.
BURKE, JOHN C.	Albany.	Washington, October, 1887.
BURLESON, GEORGE W.	East Fairfield.	Chittenden, Sept. 1872.
		Franklin, April, 1854.
		Orleans.
		Franklin, September, 1875.

BURNAP, WILDER L.	Burlington.	Chittenden, September, 1866.
BUTLER, F. M.	Rutland.	Windham, March, 1877.
BUTTERFIELD, O. E.	Wilmington.	Windham, April, 1867.
CAHOON, GEORGE W.	Lyndon.	Caledonia, June, 1855.
CARLETON, HIRAM	Montpelier.	Washington, Sept. 1865.
CARR, JOHN L.	Barton.	Orleans, September, 1878.
CHAMBERLIN, PHINEAS*	Bradford.	Orange, June, 1877.
CHASE, ISAAC N.	East Fairfield.	
CLARKE, CORNELIUS W.	Chelsea.	Orange, January, 1849.
CLARK, OSMAN D.	Montpelier.	Washington, March, 1879.
CROSS, ALBERT P.	St. Albans.	Franklin, April, 1869.
CUSHMAN, JUDSON E.	West Randolph.	
DALE, GEORGE N.	Island Pond.	Washington, March, 1856.
DANA, CHARLES S.*	St. Johnsbury.	Caledonia, December, 1840.
DARLING, J. K.	Chelsea.	Orange, June, 1874.
DAVENPORT, CHARLES N.*	Brattleboro.	Windham, April, 1854.
DAVIS, GILBERT A.	Windsor.	Windsor, May, 1859.
DAVIS, PARK	Albany, N. Y.	Windham, September, 1864.
DEAVITT, THOMAS J.	Montpelier.	Washington, March, 1866.
DENISON, JOSEPH D.	Royalton.	Windsor, May, 1869.
DICKERMAN, J. E.	Newport.	Orleans, June, 1854.
DICKEY, ASA M.	Bradford.	Orange, June, 1845.
DICKEY, GEORGE A.	Bradford.	Caledonia, June, 1877.
DILLINGHAM, PAUL	Waterbury.	Washington, March, 1823.
DILLINGHAM, WILLIAM P.	Waterbury.	Washington, Sept., 1866.
DUNNETT, ALEXANDER	St. Johnsbury.	Orange, June, 1877.
DUNTON, WALTER C.	Rutland.	Rutland, September, 1858.
DURANT, LUTHER L.*	Montpelier.	Washington, Nov., 1850.
EDDY, CHARLES B.	Bellows Falls.	Windham, April, 1858.
EDDY, JONATHAN G.	Brattleboro.	Windham, April, 1869.
EDMUNDS, GEORGE F.	Burlington.	Chittenden, March, 1849.
EDSON, H. G.	St. Albans.	Franklin, September, 1844.
EDWARDS, JOHN L.	Newport.	Orleans, June, 1843.
ENRIGHT, JOHN J.	Burlington.	Chittenden, 1883.
FARNHAM, ROSWELL	Bradford.	Orange, January, 1857.
FARRELL, PATRICK J.	Newport.	Orleans, October, 1887.
FARRINGTON, WILLARD	St. Albans.	Franklin, September, 1862.
FAY, ALLAND G.	Montpelier.	General Term, 1884.
FIELD, HENRY K.	Oakland, Cal.	Windham, September, 1871.
FIFIELD, BENJAMIN F.	Montpelier.	Washington, March, 1858.
FISK, H. C.	Morrisville.	
FOSTER, JOHN G.	Derby Line.	

FRENCH, WARREN C.	Woodstock.	Windsor, May, 1844.
GARDNER, ABRAHAM B.*	Bennington.	Rutland, April, 1844.
GARY, F. E. H.	Boston, Mass.	Washington, Sept., 1882.
GLEASON, CARLISLE J.	Montpelier.	Washington, Sept., 1858.
GLEASON, S. M.	Thetford Center.	Orange, December, 1861.
GLEED, PHILIP K.	Morrisville.	Lamoille, December, 1859.
GORDON, TRUMAN R.	Montpelier.	Washington, Sept., 1877.
GROUT, THEOPHILUS	Newport.	Orleans, September, 1871.
GROUT, WILLIAM W.	Barton.	Caledonia, December, 1857.
HALE, F. D.	Lunenburg.	
HALL, ALFRED A.	St. Albans.	Franklin, April, 1873.
HARMAN, GEORGE W.	Bennington.	Rutland, September, 1833.
HARMAN, HENRY A.	Rutland.	Bennington, Dec., 1871.
HARVEY, O. F.	West Concord.	Iowa, in 1857.
HARVEY, RONEY M.	Topsham.	Orange, December, 1870.
HASELTON, SENECA	Burlington.	
HASKINS, KITTREDGE	Brattleboro.	Windham, April, 1858.
HEATH, CHARLES H.	Montpelier.	Lamoille, December, 1859.
HEBARD, SALMON B.	Chelsea.	Orange, December, 1861.
HEYWOOD, HENRY	Lancaster, N. H.	Essex, March, 1860.
HOGAN, CHARLES P.	Sheldon.	Lamoille, May, 1868.
HOWE, CHARLES L.	Rutland.	Rutland, March, 1882.
HUNTON, AUGUSTUS P.	Bethel.	Washington, April, 1837.
HUSE, HIRAM A.	Montpelier.	{ Albany, N. Y., May, 1867. { Orange, June, 1869.
IDE, HENRY C.	St. Johnsbury.	Caledonia, December, 1870.
JOHNSON, WILLIAM E.	Woodstock.	Windsor, May, 1865.
KELTON, OTIS N.	Montgomery.	Franklin, September, 1877.
KEMP, HARLAN W.	Montpelier.	Washington, Sept., 1880.
KENDALL, P. REDFIELD	Rutland.	Orleans, September, 1873.
KENFIELD, W. H. H.	Cambridge.	Lamoille, December, 1863.
KENNEDY, GEORGE W.	Waterbury.	
LAMSON, JOSEPH P.	Cabot.	Lamoille, April, 1860.
LAWRENCE, L. L.*	Burlington.	Chittenden, April, 1866.
LAWRENCE, GEORGE E.	Rutland.	Addison, June, 1868.
LESLIE, CHARLES BRIGHAM	Wells River.	Orange, June, 1853.
LIVINGSTON, JOSIAH O.	Montpelier.	Lamoille, May, 1861.
LUCIA, J. H.	Montpelier.	Addison, June, 1868.
MANSUR, Z. M.	Island Pond.	
MARTIN, JAMES L.	Brattleboro.	{ Albany, N. Y., May, 1869. { Bennington, June, 1869.
MARTIN, JOSEPH G.	Manchester.	Windham, April, 1874.
MAY, ELISHA	St. Johnsbury.	Caledonia, December, 1868.

McGETTRICK, F. W.	St. Albans.
McFEETERS, EMMETT	Enosburgh Falls. Franklin, September, 1880.
MELDON, PAT. M.	Rutland. Rutland, September, 1882.
NICHOLS, ALBRO F.	St. Johnsbury. Caledonia, June, 1873.
NOBLE, GUY C.	St. Albans. Franklin, September, 1861.
ORMSBEE, E. J.	Brandon. Rutland, March, 1861.
OVIATT, HENRY	Montpelier. Washington, March, 1875.
PAGE, J. W.	Jeffersonville.
PALMER, EDWIN F.	Waterbury. Washington, Sept., 1864.
PAUL, NORMAN	Woodstock. Windsor, December, 1862.
PECKETT, JOHN B., Jr.	Bradford. Orange, June, 1882.
PHELPS, EDWARD J.	Burlington. Addison, December, 1843.
PINGREE, SAMUEL E.	Hartford. Windsor, December, 1859.
PITKIN, CLARENCE H.	Montpelier. Washington, March, 1872.
PLUMLEY, FRANK	Northfield. Lamoille, May, 1869.
POLAND, LUKE P.*	Waterville. Lamoille, December, 1836.
PORTER, CHARLES W.	Montpelier. Washington, Sept., 1874.
POWELL, E. HENRY	Richford. Franklin, September, 1866.
PROCTOR, REDFIELD	Proctor. Windsor, May, 1860.
PROUT, JOHN	Rutland. Addison, June, 1839.
PROUTY, CHARLES A.	Newport.
READ, LAVANT M.	Bellows Falls. Windham, April, 1869.
REDINGTON, LYMAN W.	Rutland. { Milwaukee, Wis., 1871. Rutland, September, 1873.
ROBERTS, DANIEL	Burlington. Rutland, September, 1832.
ROBERTS, ROBERT	Burlington. Chittenden, Sept., 1871.
ROGERS, D. ALLEN*	Wells River. Coos, N. H., May, 1854.
ROWELL, JOHN W.	West Randolph. Orange, June, 1858.
ROWELL, WILLIAM R.	North Troy. Franklin, September, 1870.
ROYCE, HEMAN S.	St. Albans. Franklin, April, 1844.
ROYCE, HOMER CHARLES	Vergennes. Franklin, October, 1887.
RUSSELL, J. W.	Burlington. Chittenden, Sept., 1871.
RUSTEDT, H. E.	Richford. Franklin, April, 1873.
SAFFORD, ALFRED G.	Wash'ton, D. C. Franklin, Sept., 1857.
SEAUER, THOMAS O.	Woodstock. Windsor, December, 1864.
SENER, JOHN H.	Montpelier. Washington, March, 1879.
SHAW, WILLIAM G.	Burlington. Chittenden, March, 1853.
SHURTLEFF, STEPHEN C.	Montpelier. Washington, March, 1863.
SMALLEY, B. B.	Burlington. Chittenden, Sept., 1863.
SMILIE, MELVILLE E.	Montpelier. Washington, March, 1866.
SMITH, E. CURTIS	St. Albans. Franklin, September, 1877.
SMITH, EDGAR W.	Wells River. Orange, December, 1872.
SMITH, F. WALWORTH	Leadville, Col. Franklin, September, 1877.

SMITH, HENRY H.	Rutland.	Rutland, September, 1858.
SMITH, WARREN H.	Rutland.	Orange, June, 1843.
SMITH, WALTER P.	St. Johnsbury.	Lamoille, May, 1869.
SPENCER, GEORGE B.	Rutland.	
STAFFORD, WENDELL P.	St. Johnsbury.	Caledonia, June, 1882.
STANTON, ZED. S.	Roxbury.	Washington, March, 1880.
START, HENRY R.	St. Albans.	Franklin, April, 1867.
STEVENS, HIRAM F.	Min'apolis, Minn.	Franklin, September, 1874.
STEWART, JOHN W.	Middlebury.	Addison, December, 1856.
STEWART, W. D.	Bakersfield.	Franklin, April, 1872.
STICKNEY, WILLIAM B. C.	Bethel.	
STICKNEY, WILLIAM W.	Ludlow.	Windsor, December, 1878.
STODDARD, E. W.	Brattleboro.	
STOW, GEORGE L.	Chelsea.	Chittenden, Sept., 1875.
SWINGTON, F. G.	Rutland.	Rutland, March, 1878.
TAFT, ELIHU B.	Burlington.	Chittenden, April, 1873.
TENNEY, A. D.	St. Albans.	Franklin, September, 1871.
THOMPSON, L. H.	Irassburgh.	Orleans, February, 1871.
TYLER, JAMES M.	Brattleboro.	Windham, September, 1860.
TYLER, MILTON R.	Rochester, Minn.	Franklin, September, 1860.
VEAZEY, W. G.	Rutland.	{ Albany, N. Y., June, 1860. Windsor, December, 1860.
WALES, GEORGE W.	Burlington.	
WALES, TORREY E.	Burlington.	{ Chittenden, March, 1845. New York City, May, 1867.
WALKER, ALDACE F.	Rutland.	{ Rutland, September, 1873.
WALKER, WILLIAM H.	Ludlow.	Windsor, December, 1861.
WATERMAN, ELEAZER L.	Jamaica.	Windham, September, 1863.
WATSON, JOHN H.	Bradford.	Orange, December, 1877.
WILDS, CHARLES M.	Middlebury.	Addison, June, 1880.
WILBUR, L. F.	Burlington.	Lamoille, December, 1856.
WILLARD, ASHTON R.	Boston, Mass.	Washington, March, 1882.
WILSON, JAMES J.	Bethel.	Windsor, May, 1858.
WILSON, WILLIAM D.	St. Albans.	Franklin, June, 1857.
WING, GEORGE W.	Montpelier.	Washington, March, 1868.
WING, JOHN G.	Montpelier.	Washington, Sept., 1880.
WING, JOSEPH A.	Montpelier.	Washington, April, 1836.
WOODBIDGE, F. E.	Vergennes.	Addison, December, 1843.
YOUNG, JOHN	Newport.	Orleans, June, 1862.

HONORARY MEMBERS.

THE JUDGES OF THE UNITED STATES COURTS IN THIS STATE.

THE JUDGES OF THE SUPREME COURT.

BENNETT, EDMUND H.	- - - - -	Taunton, Mass.
EVARTS, WILLIAM M.	- - - - -	New York City.
HALL, HILAND	- - - - -	Bennington.
POMEROY, JOHN M.*	- - - - -	Burlington.
STOUGHTON, E. H.*	- - - - -	New York City.

*Deceased.

TREASURER'S REPORT.

HIRAM CARLETON, *Treasurer,**In Account with the VERMONT BAR ASSOCIATION:*

1887.

DEBIT.

Oct. 26.	To deposit in Burlington Savings Bank.....	\$338 68
	deposit in Mont. Sav. Bank & Trust Co... 488 68	
	cash received for annual dues, admission	
	fees and binding reports.....	214 40
	interest on deposits.....	29 17
		<u>\$1070 93</u>

1887.

CREDIT.

By paid annual banquet.....	\$103 00
printing proceedings for two years	114 64
printing and stationery.....	26 13
prints of engraving of Gov. Mattocks.....	12 70
stamped envelopes.....	55
cablegram.....	1 08
balance cash assets.....	812 83
	<u>\$1070 93</u>

ASSETS, OCTOBER 24, 1888.

Cash deposited in Burlington Savings Bank to the credit of Hiram Carleton, Treasurer, book 9943.....	\$ 354 08
Cash deposited in Montpelier Savings Bank and Trust Company to the credit of Hiram Carleton, Treasurer, book 5442.....	458 75
Total assets.....	<u>\$ 812 83</u>

SUMMARY OF PROCEEDINGS.

1888.

President Farnham called the Association to order at the Court House in Montpelier, October 23, 1888, at 7.30, P. M., and the records of the last regular meeting were read and approved. The President then read the annual address, upon "The Condition of the Profession in this State." Salmon B. Hebard contributed a "Sketch of the Life and Character of Lyman G. Hinckley." L. H. Thompson read a memorial paper on the "Life of the late Judge Timothy P. Redfield," and W. G. Veazey read a paper commemorative of the life of James C. Barrett.

Charles H. Heath moved for the appointment of a committee to consider the advisability of having copies of all briefs, opinions, and bills of exceptions filed with the librarian of the State Library, and there bound and kept for the use of the Bar. Adopted. C. H. Heath, Gilbert Davis and George W. Harman were appointed as such committee. Mr. Heath also moved the appointment of a committee to consider what may be done for the preservation of the stenographer's minutes, and whether any change should be made in the manner of their appointment. Adopted. S. C. Shurtleff, R. M. Harvey and Norman Paul were appointed such committee.

The President then called up for consideration the pending proposals of amendment to the Constitution offered by Roswell Farnham and Elihu B. Taft, both relating to the same subject-matter, and Mr. May moved the adoption of the Taft amendment. After discussion by P. R. Kendall, Daniel Roberts, George W. Harman, Charles H. Heath, J. J. Wilson and F. E.

Alfred, the amendment of Mr. Taft was rejected by a vote of 14 to 12. The amendment offered by Mr. Farnham was rejected without discussion by a vote of 19 to 11.

The proposal of amendment offered by Mr. Haskins was then taken up, which C. H. Heath moved to dismiss. Before action thereon, Mr. Burnap moved to reconsider the motion dismissing the amendment of Mr. Taft. Adopted. After discussion by Messrs. Farnham, Burnap, Harvey, Kendall, D. Roberts, Paul, May, Boyden, and others, Mr. Burnap moved that the matter be ordered to lie. Carried. Mr. May moved to reconsider the vote rejecting the amendment of Mr. Farnham. Refused. The amendment of Mr. Taft was then further discussed, and, a vote being taken, was rejected. The motion of Mr. Heath to dismiss was rejected. Mr. Burnap then moved the adoption of the amendment offered by Mr. Haskins, and the same was adopted by a vote of 21 to 8.

The proposal of amendment offered by C. W. Brownell, Jr., was taken up in order, and, after discussion, was rejected by a vote of 13 to 10.

Hiram Carleton then submitted his annual report, from which it appears that there is a balance to the credit of the Association of \$812.83.

The amendment of Mr. Harman was, on motion of Mr. May, adopted by a unanimous vote.

On motion of Mr. Heath, the thanks of the Association were voted to those furnishing papers, and copies of the same were requested to be published with the proceedings.

The Committee on Admissions made a report, which was accepted.

Mr. Shurtleff, for the committee on Mr. Heath's motion relating to the stenographer's minutes, submitted a report recommending that the law be changed so that the appointment of a stenographer for the several county courts be hereafter made

by the judges of the county court in which said stenographer is employed. Adopted. The committee were then appointed, by vote, to prepare a bill embodying the substance of said report and present the same to the legislature.

Daniel Roberts, for the special committee, called up the report of that committee relating to mesne and final process in civil cases, and proceedings supplementary to execution; and for the committee reported that the chairman had not been able to assemble the other members so as to confer with them or make further report at this time on the subject. Mr. Ide moved to amend, and, pending discussion on the proposed amendment, Mr. Paul moved to recommit the whole matter back to the committee, with instructions to report at the next annual meeting. This motion was amended by making the time ten o'clock A. M., October 25th, and as amended was adopted.

Elihu B. Taft moved that a committee of one from each county, so far as represented, be appointed to nominate officers for the year ensuing, and that such committee report at ten o'clock A. M., October 25, 1888. Adopted.

On motion of C. H. Heath, the candidates for examination were invited to the banquet as the guests of the Association.

On motion of J. A. Wing, the Association voted that hereafter no applause, or manifestation of approval or disapproval, should be had or manifested upon the reading of any address or paper read before the Association.

The President appointed as a committee to nominate officers for the ensuing year, Messrs. Kendall, G. W. Harman, Elihu B. Taft, Wilson, Hogan, Darling, Shurtleff, Dunnett, C. B. Eddy, Wilds, Prouty, G. M. Powers and Mansur. The Committee on Nominations made their report, and the persons nominated were elected to the several positions. See list as published.

The committee on the motion of Mr. Heath relating to the filing of briefs, opinions, etc., reported, and such report was accepted. See Appendix. On motion of C. B. Eddy, Mr. Heath was appointed to present to the Judges of the Supreme Court the subject-matter of the report, and request its favorable consideration.

Daniel Roberts, for the Committee on Jurisprudence and Law Reform, presented a report. Mr. Dunnett offered the following resolution :—

Resolved, That the Committee on Jurisprudence and Law Reform be instructed to prepare a bill on the subject of mesne and final process and proceedings supplementary to execution, for the consideration of the Association at its next annual meeting, and to furnish each resident member of the Association with a copy of the proposed bill at least one month before the annual meeting of 1889.

The resolution was adopted.

George W. Harman presented a paper on the subject of supplemental proceedings, and the same was, on motion, referred to the Committee on Jurisprudence and Law Reform.

On motion of G. W. Harman, the report of the Treasurer, as audited, was accepted, adopted, and ordered printed with the proceedings.

Adjourned without day, October 25, 1888.

THE PRESIDENT'S ADDRESS.

Gentlemen of the Vermont Bar Association :

I may be pardoned, I trust, if I assume that the members of the profession who are present to-night are quite as familiar with the great principles that underlie and control the application and the practice of the law as the gentleman who may hold the position of president of this Association at any time by your votes, and have quite as positive ideas upon any of the proposed reforms as he has. At any rate, I have not felt it to be my duty on this occasion to attempt to instruct so many eminent lawyers as are here assembled upon subjects that are their daily study, although my duty to my clients may, at times, compel me, in common with all my brethren, to attempt to instruct the court in its duty in particular cases—too often, however, with little success.

I propose rather to call your attention to the standing of the profession in the state and the surroundings that tend to make the practice of the law in Vermont pleasant or otherwise.

Whatever a man may select for his life-work, he enters upon it, usually, with more than one end in view. In this northern clime and amid our frugal people, where the *lack* of wealth is, generally, so evenly distributed, it becomes every young man to enter upon his chosen business or profession with one purpose at least clearly before him. The beginners in the profession are so generally without other means of support that the first question, and one that must be answered, is, "How shall I keep the wolf from the door?" This question is usually answered somewhat satisfactorily, but it is an interrogatory that

is continually recurring, and that must as often be answered, and there is but one reply that can be tolerated.

Without attempting here to make any suggestions as to how the young or the older lawyer will answer this first question that comes to the young practitioner in this, as in almost every, business of life, I will only add that in our state, among the three hundred and sixty-three lawyers who are in practice, there are but few who feel that they are not fairly well compensated for their services, and have thus far kept *canis lupus* from the entrance to their homes. But most who enter the profession of the law, if not all, have some better motive and higher aim than simply to procure a livelihood. The boy who commences his academic education, with the thought of entering college and finally studying the profession of the law, does so with some higher motive than that of simply earning enough to support himself and family, and perhaps accumulate a competency. He could do that without so serious a preparation, and could commence his life labor at a much earlier age.

No, the young man who looks forward to the honorable profession of the law as the field of his labors does so with thoughts and aspirations above the sordid ones of food and clothing and shelter, or the accumulation of wealth. He looks forward to success in a noble profession; he anticipates with delight the intellectual contests of the forum, the interchange of thought, the balancing of argument with argument in the determination of particular cases and the settling of sound principles, surrounded by the members of his profession and in the presence of a court able to discern and to determine with justice and according to law the matters under discussion; he realizes that his work is to be done in public, that the eye of the people is to be upon him, and he studies the harder, he strengthens his mental powers by severer exercise than he would were he fitting himself for any meaner labors; he is not only ambitious to excel in his vocation, but he dares to look forward to the time when he shall so stand in the favor of the people of his town or

county or of the state, that he may hope for some public preferment outside of that which comes from the performance of the duties of his calling. What young man that has read anything of the history of his own country, or that of others, does not feel moved with some of the ambition that impels men to become leaders wherever they may be?

Our young lawyer, after a general training in the schools and a special training in the office or professional college, passes his examination and enters upon the practice of the law, with his mind trained and sharpened, his best impulses aroused and quickened for work in what he believes to be, and what he soon knows to be, a noble profession. His life is spent among men of active and trained minds, in the discussion of great principles and the application of them to the affairs of every-day life; and he is to become gradually better trained, broader in his views, and more fitted for all the duties, and especially to meet the great emergencies of life.

But our ideal young attorney is to make his home in Vermont. Has he any advantages here? Are all the advantages in life, all the prizes in the great lottery of existence, to be found in the city alone or in some Utopian land in the promising and boasting West? Our country is so broad, and the advantages to an enterprising, honest and industrious young man, almost anywhere within its extensive bounds are so great, that there sometimes seems to be no choice. Such men succeed in all parts of the country. But to the young man who will be content to grow gradually up in his profession, to live prudently, to study his law books, read somewhat of the best English literature, gradually cultivate his powers and grow in strength and wisdom, gain the esteem of his fellow citizens, and accept and be satisfied with a moderate return in the end for his labor and self-denial in the outset, will find in Vermont all that is gratifying and satisfactory in the practice of the law.

We are frequently inclined to look forward to the end and measure everything by the final result. This is not always

best, and does not by any means give us a correct estimate of life and tell us whether it is worth the living. Many times—indeed oftenest—the daily conduct of life, the weekly successes, the gradual growth, the personal cultivation, the comfort of the family, the training of children for their future labors,—those things that make up the warp and woof of human existence,—are of much more real value to us, as individuals and to the communities in which we dwell, than are the raveled and ragged ends of the threads of life, broken and tangled as the web is torn from the grasp of the powers that have woven it for so many years. No man can be justly weighed by what he is to-day, although that is the popular method. The highest justice will take into consideration the whole of life in fixing an estimate upon its true value. The end does not by any means tell the whole truth. Certainly, this must be true morally; much more is it true when we attempt to weigh a man's life with respect to its successes and its failures.

But how do these thoughts apply to the life of the lawyer in Vermont? I ask first if final success in the accumulation of wealth in the city or in the rapidly-growing West, in the midst of the turmoil and excitement of either, is an adequate compensation for the loss of the quiet days, the studious hours, the simple legal work, unadulterated with the excitement of the stock exchange or the real-estate market, which a conscientious lawyer and student of his profession finds in his own state? Even if success in these matters were any more certainly assured in the city and in the new country of the West than in New England (which we are not quite ready to admit), yet we are compelled to believe that such success in the material matters suggested is no compensation for the loss of those advantages which we may enjoy in our own state. We are often cited the expression, that a prophet is not without honor save in his own country, in support of the idea that young Vermonters can do better out of the state than in it; but the proverb is not applicable here. The very place for a young man to do his

best is among those he knows, in the midst of the customs that he has followed from childhood, and under the laws that he has begun to know practically, and to study, long before ever he took a law book into his hands.

It is worth a good deal in life to grow up in business in the midst of those with whom we have been educated and with whom we have been associated and formed friendships from childhood. Ask the summer visitor from the city or the returned Western emigrant, who is able to return once in ten years perhaps, where he finds the most comfort and the most enjoyable part of his life, and he will tell you at once that it is in his old Vermont home, and he always adds that if it were not for the ties of business he would be in Vermont himself to-day.

Let us follow for a few moments the career of some Vermont lawyer, who shall be nameless, and contrast his life with that of his city contemporary. The three hundred and more lawyers in our state may all be called country lawyers, for we have no town or city so large as to cut off any from what we call country practice. Our young example of the profession, after spending a few terms at the academy, and perhaps fitting for college, studies law in the office of a popular attorney of the county, and is admitted upon the examination of the county committee, that formerly smoothed the way to the admission of attorneys to the bar. He hangs out his shingle in a lively village upon the railroad and essays to commence practice. Now that he is fully fledged and has an office of his own, he looks about with considerable pride and satisfaction upon the few books that he possesses by the generous aid of some kind friend. He began business when the justice practice was not altogether out of date, and his first attempt at the trial of a *bona fide* case is before that august and well-informed tribunal, unless, perhaps, his preceptor in the law may have taken him out some time with him to take minutes of testimony, and allowed him the privilege of making the opening argument in cases where he

could do no harm. He goes into the first contest in which the entire responsibility rests upon his own shoulders with a good deal of special preparation, such as it is, for the case. He takes with him, to the distant school-house or bar-room where the case is to be tried, the larger part of his meager library, feeling confident, on the facts as stated to him by his client and the law as he has looked it up, of a successful issue in the trial. His adversary is many years his senior and has had long experience in this kind of tribunals, and the first move he makes almost takes away the breath of our youngster, it comes so near leaving him without any case in court ; but the justice, who has had some experience and is not so wise in the technicalities of the law as he was the first year of service in a judicial capacity, comes somewhat to his aid and overrules the objection to the writ, and the counsel and the court, with the aid of the constable, proceed to draw a justice jury. The prejudices and narrowmindedness that pervade the minds of too many of those called to this important duty have not yet come to the knowledge of the tyro in practice, and he selects his jurymen without the scrutiny and care in this respect that his elder brother in the law gives to the matter, and perhaps, upon the whole, his judgment is quite as good. The witnesses are conferred with, while the officer has gone for the jury, and the fact gradually dawns upon the unsophisticated mind of the young man that his case is not exactly what he supposed it to be from the story of his client, but he swallows his chagrin, and after supper, in the crowded school-house, filled with tobacco smoke and foul air, with his back roasting towards the hot stove and his feet freezing upon the cold floor, he makes the opening statement of his case. In his desire to be fair, he does not give it quite the coloring that he ought, while his adversary, with a knowing wink at the jury, sneeringly asks him if he expects to win on such a case as that. He calls his witnesses, and the story told him by his client is so mixed up with the different case now being developed before him that he at first makes poor headway, and it is not until the repeated sarcasms of his opponent rouse

his dormant temper, that he throws off his embarrassment and feels like himself. He has thoroughly studied the case given to him, both as to facts and the law, and when fully aroused he knows what he is about, and catches in an instant the difference between the two cases, the one which his client has told him about and the one before him on trial. He is being educated on the spot, and he adds to his own skill by watching the adroitness of his adversary. He finds that he knows facts in the case and has looked up the legal bearings of the questions more thoroughly than his self-confident opponent has done; and, although new questions are raised and the ones he has examined are presented in an aspect different from that in which he had looked at them before, he meets them readily, his resources seem to multiply as the contest goes on, and he begins to feel that he is somewhat the master of the situation, as he catches the approving eye of some friendly and sympathizing jurymen. His courage reaches the culminating point, when the justice, upon some question of extreme importance in regard to the introduction of testimony, rules in his favor, contrary to his expectation and against his own convictions. His adversary loses a point by losing his temper and indulging in some remarks not flattering to the intelligence or satisfactory to the vanity or the dignity of the court. The argument begins. Our novice does not a second time make the mistake of not claiming enough. It is past midnight. He does not know it. The excitement, the clashing of mind with mind, the mental tension, give him the full command of all his faculties, and he pours out his convictions in a hurried current of talk, that has some of the elements of true eloquence. It comes from the heart, is sincere, and is the immediate product of the heated battle. It is convincing, for the moment at least, and until the other side is heard.

But when the mature counselor, upon the side of the defendant, rises and, with his assumption of superiority of knowledge and experience, and with words of withering sarcasm and

ridicule, keeps the *ex-tempore* court-house in a roar of laughter at our hero's expense, the latter grows flushed in the face, feels belittled and ashamed that he has said so many things that may convey an entirely different meaning from what he intended, confounded that he forgot some important items of testimony and that he did not see the bearing that other statements made by witnesses might have upon the case. But when the "old man," as he has now begun to call him, launches out upon his own views of the law and the evidence, the young man detects many misstatements of the testimony, partly the result of a failure to remember and partly from some other cause, many fallacies in the argument, and an unfair or improper application of the law; and, although the argument for the defense makes its impression, yet, when he rises to close the discussion, he does so with courage in his eye and with confidence in every feature. His final argument is not altogether limited by the facts or hemmed in by the law. He pours out a flood of heated declamation, heedless of the attempted interruptions of the gentleman upon the other side, and with a good deal less of respect for the experience and gray hairs of the "old man" than when the trial commenced. His client's courage is at the highest pitch and he fully expects a verdict, a conclusion in which his young counselor as fully coincides.

But what is fated, and what a justice jury will decide, are among the unknowable things, until they have happened. The jury goes out. After deliberating some time in the small hours of the night, and discussing all of the questions that are immaterial, the jury of six bring in a verdict for the defendant. The plaintiff and his attorney can hardly believe their ears, and the latter immediately declares that he appeals from so absurd a decision, and, his client not being able to furnish other recognizance, the eager attorney offers himself. To this the considerate counsel upon the other side objects, upon the ground that the recognizance is not sufficient. The cup of humiliation of our young aspirant for legal and forensic honors is now full to

overflowing, and he receives with an ill grace the well-meant commendations of his senior in the profession upon his argument in the case, and he turns to his client with bitterness in his heart, feeling that courts of justice are a delusion and the intricacies of the law are a snare to entrap the unwary. But he is unfortunately relieved in respect to the matter of the recognition by the court accepting his offer to recognize, and the cause is soon on its way to a higher tribunal, and he has a case in the county court.

In later years, he learns the well-intentioned kindness of the objection to his recognizing for costs, made by the opposing lawyer, when he has the bill of costs to pay out of his own pocket, after failing to collect anything from his client for his services and expenses in the trial and management of the case through the courts of the several grades. But his exertions and failure in such a trial are not without their lesson and usefulness to him. The training in our justice courts is not the best that we can imagine, but it is the best to be had by a young practitioner.

If a young man could at once be put into the trial of causes in the county court and could find clients willing to trust him there, he might get a better experience than that before a justice of the peace; but as beginners are usually circumstanced, not only in this state but in others, these justice trials have furnished the best training school for young practitioners that we have had. The very freedom from the restraint of the better and stricter rules of the higher courts throws them more upon their own resources and compels them to devise expedients upon the spur of the moment, as the needs of the case demand. They here argue both the law and the facts, and are trained, not in elegant oratory, to be sure, but to such arguments as convince the minds of men. Some of the best trial lawyers in my acquaintance got their first and most efficient training in justice trials, held in the bar-rooms, school-houses and town-halls of the various towns of their county. Inde-

pendence, resolution, quickness of apprehension, an ability to argue facts and the law so as to reach the mind untrained in this direction, a skill to appeal to the motives and feelings of men in common life,—these are all gained in those elementary courts of justice, and our best Vermont lawyers have all had their faculties trained there.

I have spent more time upon the experience in justice courts, as they formerly existed, than perhaps I ought ; but they have been so marked a feature in the experience of every lawyer present that I have felt myself warranted in saying as much as I have. In addition to the experience and the special training gained in such forums as I have described, the young practitioner is thus brought in contact with the people of all parts of his county and continually makes valuable acquaintances. He increases his business and betters his standing in the county and state. Instead of going from one dingy office in the city to another, he drives through the county, along the lovely valleys and over the refreshing hills of this good state, breathing in the pure air and enjoying all there is in the contact with nature. He meets the storms and snows of winter, but these only give new vigor to his frame and a healthier action to his brain.

At the sessions of the county courts, as was formerly the case in *every* county and as is true in several counties now, the gathering of the lawyers for the business of the term is the assembling together of warm friends, of brothers—not in name alone, but in fact. The social element is prominent, and lawyers in Vermont look forward to the sessions of the courts with a great deal of pleasant anticipation, notwithstanding the hard work and the many disappointments that may be before them. There can be no such fraternity of feeling among the members of the bar where courts are held, as in the cities, from week to week continuously, and there is no especial gathering of the lawyers on the assembling of the courts. Business may be well done in the city, but there are other things to live for than

business, and which are enjoyed to a much greater extent in the country. Some of our most prominent lawyers, whose homes have been in the larger towns, have repeatedly said that the pleasantest part of their practice was when they went out to the county seat of some distant county, away from the railroad, and spent the time, when not engaged in the trial or preparation of cases, in social intercourse with their brethren of the county. It is an opportunity that can be enjoyed only in the country, for only there do the attorneys assemble at court at the beginning of the term and remain until its close.

In vacation, the taking of depositions, the hearing of cases before auditors, referees, commissioners and masters in chancery, and, formerly, the taking of testimony in chancery, although strictly in the line of business, afford many pleasant hours. The drive over the hills in the genial weather of summer or the bracing air of winter affords a pleasant change from life in the office. The hearty-greetings of counsel upon opposite sides of the case sometimes make clients suspicious that their interests may be sacrificed, out of courtesy between the opposing counsel; but their minds are soon disabused of this erroneous idea when the hearing begins and they see the combativeness of the two sides aroused. They often wonder that men who enter into a trial with so much earnestness can be so courteous to one another and apparently so friendly after the trial is over. Such meetings are oases in the arid business desert of life.

Whether it is because the lawyers in the country are men of more character and integrity than their brethren in the city, I know not; but it is true that the members of the profession stand higher in the esteem of business men, and of their fellow citizens and the public generally, in the country than they do in the cities. One reason is because the lawyers here live in the midst of and beside of clients, citizens and jurymen, and the prejudices and ill-will that grow out of the trial of a hardly-contested case do not survive long the final disposition of it by

the court. The result of this personal esteem is that lawyers everywhere in the country have a high standing in their communities and are useful and leading members of society. They are interested in all matters of education and right reform, and are made to perform their full share of the civil duties of our miniature republics—the New England towns. There are no public meetings held, of any general interest—educational, political, patriotic—without the lawyers of the vicinity being called upon to take an active part. In fact, they take a part in these matters because they are interested in them.

They are a part of the community in which they live. It is of more value to the man to be identified with the people who surround him, and to catch the inspiration and gain mental and moral support from the immediate tide of humanity in which he floats and struggles, than to suffer the isolation of city life, with all of its advantages for culture and polish. A few of our best lawyers have tried city life for a while, but have returned to the more congenial practice of law in Vermont, to their continued satisfaction.

Vermont lawyers practice in all branches of the profession. There is no separation into classes, following specialties. They occupy the whole broad field,—including commercial law, criminal law, the law of insolvency, probate and divorce, conveyancing, special pleading, chancery, and all the branches into which the business of the profession may be subdivided. It is evident at once that no man can be as well trained in all these branches as he can if he limits himself to practice in one department. But in a sparse population the work cannot be subdivided; each practitioner must be able to respond to all the calls of the community about him, and his circuit may be several miles in extent. The practice under such circumstances may not be the best, the most accurate, that can be had, but its effect upon the man is likely to be most favorable. It broadens him in every way and gives a wider field for the exercise of his talents. It brings him into contact with all classes

of people, and he becomes more fully identified with his state and his country.

Mr. Phelps, in his address at the first annual meeting of this society, instanced the rapid rise of Judah P. Benjamin at the English bar, as an example that American training, in all phases of the law, was beneficial. He said he was then the leader of the Northern Circuit, and that his practice was said to be worth £30,000 per year; and that it was Benjamin's wide knowledge of the law and mastery of its practical application to business, that gave him such a lead, in his opinion.

While a few of our best lawyers have steadfastly refused to listen to the temptations to enter into political life, the great majority are naturally, and as a matter of course, interested in the politics of this state and country. Their studies of the law naturally lead to the consideration of the science of government and its practical application. Naturally, they make the best-informed legislators, and we should expect, what proves to be the case, that they make most efficient and honest public officers. Their study of the law and contemplation of the principles of justice make them more observant of the statutes of the state than even that other profession whose duty it is to inculcate moral principle, but who sometimes preach more than they practice in respect to the observance of the law of the state. When the members of our profession have turned aside from its arduous duties and have shown a desire to enter the field of politics, the people have in instances innumerable shown their confidence in the lawyers of the commonwealth by electing them to the most honorable offices in the town, county and state. These positions have been almost universally well filled, and in many instances the duties are such that they can only be properly performed by men trained in the profession.

Lawyers have not only performed well all the civil duties of life, but when the slaveholders' rebellion broke out and there was doubt in many quarters, high and low, the lawyers of Ver-

mont, to their glory be it said, almost to a man were on the side of the Union. The first man to offer his services to the governor was one of our brethren, Col. Charles H. Joyce. Very many of the young lawyers enlisted early in the war, as did also a large number of the older ones, to the destruction of a profitable practice. It has been said that more members of our profession, in proportion to its numbers, entered the service of their country than came from any other class. Certainly they always did their duty. Almost all of them became officers of some rank, very many of them holding positions of great responsibility. General L. A. Grant, who so long commanded the old brigade, and left the army a brevet Major General, was a lawyer from Windham county. In the second brigade there were eight field officers who were, or since have become, members of the bar in this state. One of them is now a member of the supreme court, one is a member of congress, and three of them have been governors of the state. Our late governor was a captain in the same brigade. The lieutenant-colonel of the First regiment, and who commanded the regiment during most of its term of service, was a Windsor county lawyer, and after he came home from Virginia was the most efficient adjutant general that any state in the Union had during the war, and later was governor. The major of the First regiment was also a lawyer. Among the field officers of the old brigade, at least twenty were, or have become, lawyers. One of those soldier-lawyers has been governor and another is an honored member of the inter-state commission. The Eighth, Ninth, Tenth, Eleventh, and Seventeenth regiments, and the batteries and sharpshooters, had many lawyers among their field and line officers. The cavalry regiment was for a long time commanded by a Vermont lawyer, and one of its captains is now speaker of the house of representatives in this state. The colonel of a colored regiment, also a lawyer, is now the state auditor of Vermont, and a paper will be read here to-night by one who was a lieutenant in the Second Vermont battery. But I have

not time to enumerate all of the members of our honorable profession who showed themselves to be patriots at the breaking out of the rebellion and honorable soldiers during that bitter struggle that followed, who have since been honored by our state; or, if I had time, I do not know them all.

The three hundred and sixty-three lawyers in the state reside in ninety towns. Those ninety towns have sent eleven of their attorneys to represent them in the general assembly this year, and the counties have elected nine lawyers of the thirty members of the senate. The present governor, secretary of state, state auditor, and speaker of the house, belong to the same profession. Of course, it is unavoidable that those men, trained in the study of the law and many of them with former experience in the legislature, should have a great, if not a controlling, influence upon legislation. The chairmen of the important committees are lawyers. In 1884 there were nineteen lawyers in the house of representatives, and in 1882 there were ten in the senate and also in 1878. For the last fourteen years there have been, upon an average, twenty-one members of our profession in the general assembly.

There have been forty-one governors of our state since its organization, including the present able incumbent of that office; of that number, at least twenty-six were lawyers, and probably more. Since 1848, of the twenty-one gentlemen who have served as lieutenant-governor of the state, sixteen have been members of the legal profession. Of the eight secretaries of state since 1842, six have been lawyers. Of the forty-one members of congress since 1827, twenty-eight have been of our profession. Of the twenty-six United States senators since the organization of the state, twenty-two have adorned the honorable profession of the law. Of course, all of our judges of the higher courts and state's attorneys must be members of the same profession. The present minister to England was the first president of this association. A Vermont lawyer, known

for his scholarly attainments throughout the literary world, represented our government in Turkey, and died while United States minister to Italy. Vermont lawyers have been ministers to Russia and to Austria.

But why need I attempt to enumerate the honors that have been heaped upon the profession in this state? At one time there were sixteen Vermonters in congress from the different states, and of this number at least twelve were lawyers. I have said enough to show that the people of Vermont think well of the profession that has done so much for them.

I had thought of speaking of some of the leaders of the bar, now passed away; but I am admonished that this occasion will not warrant my taking more time, for there are other exercises to follow. If a young man proposes to himself, as his only aim, success in business and advancement in his profession, without regard to his surroundings in other respects, let him seek the centers of business and there burn his life away and take such reward as such success may give him. But if he cares somewhat for the cultivation of himself as a man, a citizen, and a member of society, he may well be content with such rewards as the practice of his profession in Vermont will afford him, although there may be truth in the expression I once heard a learned judge use to a young gentleman just admitted to the bar, in his court, when addressing him upon his duties, he said, "I welcome you to a profession whose members work hard, live well, and die poor."

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A MEMORIAL SKETCH
OF
TIMOTHY PARKER REDFIELD.

READ BEFORE THE VERMONT BAR ASSOCIATION,
OCT. 23, 1888.

BY HON. L. H. THOMPSON.

TIMOTHY PARKER REDFIELD was born at Coventry, Orleans County, Vermont, November 3, 1812, and died at Chicago, Ill., March 27, 1888. He was one of twelve children—six sons and six daughters—born unto his parents, Dr. Peleg Redfield and Hannah (Parker) Redfield. The father, Dr. Peleg Redfield, was of English descent, and a grandson of the Revolutionary soldier, Capt. Peleg Redfield. He was born at Killingworth, Connecticut. He settled in Coventry, Vt., in June, 1805, on a farm still owned by his descendants. He was the first settled physician in Coventry, and the fourth in Orleans county. His practice was extensive and arduous. Such was the condition of the country and lack of roads that he had to visit his patients on horseback, and not unfrequently on foot through the forest. Although, perhaps, not what can be justly called a brilliant man, he was a man of vigorous mind, sound judgment, and good practical common sense. He stood well in his profession, and was honored and respected by all who knew him. Hannah (Parker) Redfield, the mother of Timothy P., was a daughter of Isaac and Bridget (Fletcher) Parker. She was born in Milford,

Mass., Nov. 17, 1785, married at Weathersfield, Vt., in March, 1803, and died at a ripe old age a few years since, at Coventry. She was a remarkable woman. She faithfully performed her maternal duties in rearing and training her large family. She also proved herself a worthy helpmeet to her husband in establishing her new home on the hillside of Coventry and was ever its presiding genius, to whom the husband and children always turned for cheer and inspiration. Possessed of strong character and remarkable intellectual ability, throughout her long life she was a great reader of the best literature of her time. In the current topics and events of the day, she always took a keen interest. Her conversational powers were fine and charming. To a great extent separated by her lot in life from the refinements and social intercourse of educated and refined society, yet such were her attainments, her sterling worth and native sense, that she would have adorned the best society and won admiration for her charming qualities and inherent worth. From her, both Timothy P. and Isaac F. inherited the characteristics and mental qualities which, with their industry, brought them well-deserved eminence.

The early life of the family was attended with many of the privations and discomforts which inevitably go with pioneer life. The country was new, but full of hope. The elder brother, Isaac F., determined to go to college, and, after attending a preparatory school eight months, he entered the Freshman class at Dartmouth College, then eight months advanced in their course. No doubt moved by his brother's example, Timothy P. was possessed with a desire to obtain a liberal education. He aptly described it to the writer as "a desire without logical reasoning, an insatiable longing, not from suggestions, but from intuition, to obtain a college education." He pursued his preparatory studies at Peacham, Vt., and elsewhere, and fitted himself to enter college as well as his facilities would permit. At about the age of twenty, he was ready to enter Dartmouth College. Then the great question presented itself

as to how the expense of the four years' college course was to be paid. He was without means; he could reasonably expect but little assistance from his father, but, full of hope and self-reliance, he entered Dartmouth College. To save his scanty funds, he walked most of the way from Coventry to Hanover, N. H., when he entered college. By teaching three months each winter he added something to his scanty finances, and now and then a kind friend, admiring his courage and industry, helped him to much-needed means, so that in 1836 he completed his college course and graduated with honor. During his college course he was a thorough student, ranking among the first in his class. His class graduated with forty-eight members, among whom were the Rev. Samuel Colcord Bartlett, now president of Dartmouth College; Prof. Alpheus Robert Brown, Hon. Frederick William Choate of Boston; Prof. Erastus Everett of New York City; Hon. John Wentworth of Chicago, Ill.; Rev. Dr. Ezra E. Adams, a Congregational missionary in France for many years; Hon. Stoddard B. Colby; Hon. James W. Grimes, afterwards governor and United States senator from Iowa; and Dr. Edmund R. Peasley, afterwards professor of anatomy at Dartmouth, Bowdoin, and the New York Medical Colleges. Judge Redfield always remained strongly attached to his *Alma Mater* and took great pleasure in attending its annual commencements. He received the degree of LL. D. from Middlebury College in 1877, and from Dartmouth in 1881.

Immediately after leaving college he entered the office of his brother, Isaac F., as a law student. While pursuing his legal studies, he taught for a time at Brownington Academy, taking the place of Rev. Alexander L. Twilight, an eminent teacher who for twenty-two years was at the head of that academy. In 1838, he was admitted to the bar and began the practice of his profession at Irasburgh, Vt. February 6, 1840, he married Helen W. Grannis, daughter of William Grannis of Stanstead, P. Q., who survives him. Four children, issue of this marriage, were born, of whom one only, Alice, the wife of Andrew J. Phillips of Chicago, Ill., survives.

In politics, Judge Redfield was a democrat. In 1848 he was senator from Orleans county. Under President Buchanan's administration he was appointed postmaster at Montpelier. During the exciting years from 1860 to 1865 he was vigorously outspoken in his democracy, and in 1864-65 was the democratic candidate for governor. In 1884 he was the democratic candidate for United States senator against the Hon. Justin S. Morrill, the republican candidate. It is needless to say that a man of position and intelligence who has been a democrat in Vermont for the last twenty-five years has been so from honest convictions and principle. It is probably well for Judge Redfield's standing as a lawyer that he belonged to the minority in politics, as otherwise, without doubt, he would have been drawn into political life.

He resided at Irasburgh, Vt., from the time of his admission to the bar until 1848, when he removed to Montpelier, Vt., where he continued to reside until his death.

He was interested in the National Life Insurance Company from its organization in 1850, being one of its first directors, which office he held to the time of his death. He was also a director of the Vermont Mutual Fire Insurance Company from 1851 to the fall of 1887, and was vice president from 1857 until 1873.

He was engaged continuously in the practice of his profession from his admission to the bar until he was elected a judge of the supreme court of Vermont in 1870 by a republican legislature. He was successively re-elected judge until the fall of 1884, when he declined a re-election.

From the outset of his professional career he commanded the respect and confidence of the people of his native county, and soon became one of its leading lawyers. From 1856 to 1870 he practiced constantly in the courts of Orleans, Caledonia and Washington counties, being engaged in many of the most important trials. His associates and antagonists at the bar were

such men as Luke P. Poland, Stoddard B. Colby, Lucius B. Peck, Thomas Bartlett, George F. Edmunds, Edward J. Phelps, Andrew Tracy, Peter T. Washburn, James Barrett, Julius Converse, and others of like eminent ability in their profession, who always found him an efficient helper when their associate, and a "foeman worthy of their steel" when their opponent.

As a lawyer, Judge Redfield ranked as one of the ablest, and an equal of any in the state. While a student and in the early years of his practice, he became well grounded in the elementary principles of equity and the common law, and thus his mind was illumined by what Lord Coke aptly styles "the gladsome light of jurisprudence." Possessing a fine, legal mind, he was thus able in after years, almost intuitively, to form correct conclusions as to the law governing the case under consideration. With Lord Coke, he believed that "reason is the life of the law; nay, the common law itself is nothing else but reason," and hence he brought his judgment, his sound common sense, and his instinctive sense of justice, as well as legal learning from the books, into the consideration of his cases. He was never so ardent and untiring a student as his brother Isaac F., yet he read widely and well, and in the trial of questions of fact or of law was always found thoroughly equipped. Possessed of an excellent memory, sound judgment, fine reasoning powers, a judicial temperament, and a most subtle intellect, he was safe counsel and a most dangerous adversary. A man once his client usually was always his client. When he left the bar for the bench, but few lawyers, if any, in the state had a larger clientage than he.

As a practitioner at the bar he was self-possessed, cautious, skillful, clear-headed, quick to discern the weak points in his adversary's case and to grasp the strong ones in his own, thus being an opponent who required constant attention. In the cross-examination of witnesses he was skillful. He early learned the "art of silent cross-examination." Never loud or lengthy, he gave the hostile witness no chance to reiterate

damaging testimony, but after quietly eliciting something, if possible, to break the force of the adverse testimony, such witness was quietly and blandly dismissed. Baron Alderson could never have said of him, as he is reported to have said to an advocate of great noise and mistaken energy, "Mr. B., you seem to think the art of cross-examination is to examine crossly." While at the bar, as an advocate, he was not surpassed by any lawyer in the state. He impressed a jury by his dignified bearing, his apparent fairness and candor. To an ordinary jury his face was "like a benediction." He knew them and their fathers before them, and his jury arguments abounded in anecdotes in which they or their ancestors had taken a creditable part. Thus he quietly insinuated himself into their good graces until they were ready to believe that so genial and pleasing an advocate must be on the right side. He had a happy faculty of marshaling the facts in his favor and supporting them by cogent reasoning. When arguing a case his manner was easy and quiet, and his tone conversational, but when thoroughly aroused he was earnest in manner, spoke rapidly, and in ringing, incisive tones. On such occasions his countenance glowed with the light of feeling and of intellect, and his words fell with magical effect upon his audience, and he stood forth a true orator, one "on whose tongue the fiery touch of eloquence has been laid, whose lips the Attic bees have stung with intensity and power."

His skill and power as an advocate unconsciously clung to him after he became judge, and at times manifested itself in his charges to the jury or in rendering a judgment. At times he would so present one side of a debatable case as to almost make it seem there was only the side he had thus presented; then he would make what has been wittily described as an "eloquent pause," after which he would begin with an ominous "but" to marshal the facts upon the other side, and to combine them in so striking and suggestive a manner as apparently to call for a judgment or verdict directly opposite from that suggested by

his opening remarks. His opinion in the case of *Hoyte v. Dewey*, 50 Vt. 473, illustrates this peculiarity. Of unquestionable integrity through all his life, such was the confidence of the people of Orleans and Washington counties in his honesty and sound judgment, that, when he commenced holding courts in these counties, the jury in many cases were inclined to render verdicts in accordance with what they deemed to be his views as to a just disposal of the case.

A story is told of J. A. Wing, Esq., of Montpelier, which, if true, was quite a compliment to Judge Redfield's magnetic and persuasive influence over a jury in presenting a cause. The Washington County Bar, after Judge Redfield's retirement from the bench, procured a fine portrait of him and placed it in the court house where it overlooked the jury box. Mr. Wing was solicited to give something towards the expense of procuring the portrait after it was put up, and, having in mind to his sorrow some of Judge Redfield's eloquent and magnetic charges to the jury, replied that he "would cheerfully do so if they would turn the face of the picture to the wall whenever the court was charging the jury."

His reputation as a lawyer, so far as the bar is concerned, will probably rest largely upon his judicial labors, but by the common people he will be kept in remembrance by his fame as a consummate advocate, whose skill and success tradition will embellish and magnify.

In the consideration of legal questions, while on the bench, he displayed keen perception, sound judgment, and a fine judicial poise of mind. His opinions are able and will prove a lasting monument to his ability and learning as a lawyer and a judge. Comparisons are odious, but it is no disparagement to his learned associates to say that while he was judge no abler man sat upon the bench of the supreme court of this state.

Lord Lyndhurst, while Chancellor of England, in describing the principle upon which he selected a judge, said, "I look out

for a *gentleman*, and if he knows a little law so much the better." Judge Redfield never forgot that one of the requisite qualifications of a judge is good manners. On the bench he was always a gentleman, and treated the bar with a dignified courtesy which was fully reciprocated. On the bench he never lost his temper or self-control. A difference of opinion on a question of law or fact, between himself and counsel, aroused all his latent intellectual powers, but never disturbed his manners, and the defeated counsel felt that the skillful manner in which he had been cast was worthy to be classed among the "fine arts"; that he had been decapitated, not by a butcher's cleaver, but by a Damascus blade, wielded by a master's hand.

Judge Redfield was a fine classical scholar. He was also widely read in the best English literature, the beauties and strength of which he keenly appreciated. His tastes were scholarly, and what he read he made his own. Among the English poets, Byron particularly delighted him. Only a few years before his death, in a conversation with the writer, he quoted with fine effect a stirring passage from Byron's *Manfred*. English history, especially constitutional history and the history of the common law, always had a charm for him, and by its study he thoroughly mastered the principles that underlie [our own political development, and which are really the basis of our civil polity.

In social life he was a charming companion. Simple in manner and frank in speech, he abounded in anecdotes and reminiscences of the early lights of the bar with whom he was associated or acquainted, as well as of many men prominent in other walks of life. He had a vein of quaint wit and humor, which caused him instinctively to seize upon and retain the droll sayings and interesting stories which so aptly and forcibly illustrate the public and private life and real character of so many men. This trait of mind is seen in quaint expressions and anecdotes which sometimes are found in his published opinions, as, for instance, his description of a horse as having the "historic vice of running away with any occasion," in

Cheney v. Ryegate, 55 Vt., and his humorous description in *Wilder v. Gilman*, 55 Vt., as to what constitutes "good faith," according to the luminous idea of an ordinary justice of the peace.

In his domestic life he was a kind and loving husband, and an affectionate and indulgent parent.

From early life Judge Redfield was a communicant of the Episcopal church and held many of its offices. He led an exemplary life, free from the habits and vices which so often tarnish the otherwise fair fame of public men.

Taught by the struggles and hardships of his early life the true value of money, he was ever frugal in his habits and simple in his manner of life.

He had long entertained a desire to visit England and the continent of Europe. On account of poor health, he took this trip in the summer of 1883. He visited England and France, and spent the following winter in Italy. From the latter country he wrote a series of interesting letters, which were published in the *Argus and Patriot*. Amid the historic and classic scenes of Italy, he found a realization of the dreams of his college days. In England he also found much connected with the administration of justice to interest him, and he spent many pleasant hours in visiting the inns of courts and other places of so much interest to the lawyer.

After his retirement from the bench, surrounded by appreciative friends, he enjoyed in the quiet of his beautiful home the well earned leisure of a well spent life. When at last he joined the unseen band of the friends and companions of his youth, and of his early and later manhood, who now with him "rest from their labors," it could be truly said of him,

"How well he fell asleep!
Like some proud river widening
Toward the sea,
Calmly and grandly, silently and deep,
Life joined eternity."

In closing this slight tribute to the memory of Judge Redfield, as more felicitous than any words of mine could be, and as strikingly applicable to him, I quote from the eloquent eulogy some years since pronounced on another eminent lawyer, deceased: "And now when I consider this long life closed—these many years ended of eminent labor in the highest ranks of the forum—and nothing left of it all but a tolling bell, a handful of earth and a passing tradition—a tradition already half past—I am reminded of the infelicity which attends the reputation of a great lawyer. To my thinking, the most vigorous brain work of the world is done in the ranks of our profession. And then our work concerns the highest of all temporal interests, property, reputation, the peace of families, liberty, life even, the foundations of society, the jurisprudence of the world, and, as a recent event has shown, the arbitrations and peace of nations. The world accepts the work, but forgets the workers. The waste hours of Lord Bacon and Serjeant Talfourd were devoted to letters, and each is infinitely better remembered for his literary diversions than for his whole long and laborious professional life-work. The cheap caricatures of Dickens on the profession will outlive, I fear, in the popular memory, the judgments of Chief Justice Marshall, for the latter were not clownish burlesques, but only masterpieces of reason and jurisprudence. The victory gained by the counsel of the seven bishops was worth infinitely more to the people of England than all the triumphs of the Crimean war. But one Lord Cardigan led a foolishly-brilliant charge against a Russian battery at Balaklava, and became immortal. Who led the great charge of the seven great confessors of the English church against the English crown at Westminster Hall? You must go to your books to answer. They were not on horseback. They wore gowns instead of epaulettes. The truth is, we are like the little insects that in the unseen depths of the ocean lay the coral foundations of uprising islands. In the end come the solid land, the olive and the vine, the habitations of man, the arts and industries of life, the havens of the sea and ships

riding at anchor. But the busy toilers which laid the beams of a continent in a dreary waste are entombed in their work and forgotten in their tombs. Yet the infelicity to which I have alluded is not without its compensation. For what, after all, is posthumous fame to him who brought nothing into this world and may carry nothing out? The dead leave behind their reputations alike with their estates. A man may be libeled to-day as a fool, fanatic, and a knave, and to-morrow his libelers sneak into his funeral procession, and the chief magistrate of millions of freemen begs the honor of two feet of space at his obsequies. It is the old story—the tax which posthumous fame so often pays for its title—a garret and a crust in life, a mausoleum and statue afterwards. What avails it all? We may justly console ourselves with the reflection that we belong to a profession which above all others shapes and fashions the institutions in which we live, and which, in the language of a great statesman, “is as ancient as the magistracy, as noble as virtue, as necessary as justice,”—a profession, I venture to add, which is generous and fraternal above all others, and in which living merit is appreciated in its day, according to its deserts, and by none so quickly and so ungrudgingly as by those who are its professional contemporaries and its competitors in the same field. We have our rivalries—who else has more?—but they seldom produce jealousies. We have our contentions—who else has so many?—but they seldom produce enmities. The old Saxons used to cover their fires on every hearth at the sound of the evening curfew. In like manner, but to a better purpose, we also cover at each nightfall the embers of each day's struggle and strife. We never defer our amnesties till after death, and have less occasion, therefore, than some others to deal in *post-mortem* bronzes and marbles. So much we may say without arrogance of ourselves—so much of our noble profession. No better proof and illustration can be found than in the life just closed,—a life clear and clean in its aims, full of busy and useful labors, void, I dare believe, of offense toward God and man, and crowned in its course with that three-fold scriptural blessing—“length of days, and riches, and honor.”

A MEMORIAL SKETCH
OF
LYMAN GILLETT HINCKLEY.

READ BEFORE THE VERMONT BAR ASSOCIATION,
OCT. 23, 1888.

BY HON. SALMON B. HEBARD.

IN attempting to prepare a paper on the life and character of the late Hon. Lyman G. Hinckley, I do so with a good deal of hesitation, not from any unwillingness to perform the task, but from a sense of my unfitness in a literary point of view to do justice to the numberless good qualities of the man, or to correctly and forcibly delineate the eminent and peculiar characteristics so distinctly belonging to him. Still, the duty could not have devolved upon one more willing to attempt it, however feebly I might do it, or to whom it would be more pleasant, from admiration of the subject and due remembrance of many personal benefits.

LYMAN GILLETT HINCKLEY, the subject of this paper, was born in Thetford, Vermont, April 13, 1832. His father was the Hon. Lyman Hinckley, who died three or four years ago, once assistant judge of Orange county court. Judge Hinckley was a man of ability and sterling integrity, and his son inherited these qualities.

Lyman G. Hinckley was prepared for college at Thetford Academy under the famous Hiram Orcutt, then principal of that noted fitting school. He entered college at Dartmouth in 1852, and graduated in 1856. His college course was completed at his own expense, and with but little temporary aid, afterwards repaid. To pay his way while in college, he taught school in the winters, and in the summer vacations he canvassed and collected for Thomas Hale, then editor and publisher of the *Windsor Journal*. He also added to his resources by the sale of books, canvassing for Benton's "Thirty Years in the United States Senate," and met with great success in his own county. In canvassing for that book he was in a great measure successful by the display of those characteristics for which in after life he was remarkable; his geniality, good companionship and ready retort greatly aided in the sale of that book. I first became acquainted with him while he was selling Benton, and I well remember one notable instance of his quickness of perception and readiness in reply which effectually turned the tables on a would-be practical joker. A certain person, who shall be nameless, was serving as clerk in one of the dry goods stores in Chelsea. This clerk was somewhat pompous, of a dark complexion, and in features had some of the characteristics of the aboriginal tribes of America. Certain of the students of Chelsea Academy had played a practical joke upon this clerk by sending one of their number to buy a school book which they designated as "Davies' Review of the Androscoggin River." The clerk, not being of a literary turn, supposed there was such a book and hunted for it on the shelves, but, not finding it, told the student that they were then out of that book but would at once send for it. Before long the joke leaked out, and this clerk determined to get rid of it on some one else. When Mr. Hinckley came with the Benton, he offered it for sale in this store, and this clerk conceived that this was a good chance to get rid of the joke perpetrated on him by the student. So, in his pompous way, he asked Mr. Hinckley if he had

"Davies' Review of the Androscoggin River." Mr. Hinckley saw at once through the joke, and without hesitation replied that he had not that book, but had a better one, "St. Paul's Epistle to the North American Indians," which he was authorized to sell to the natives at half price, and asked him if he wanted one. This was generally the result of any practical joking attempted to be played on him.

While in college, he was one of the most popular members of his class; and, although he did not rank so high in mere book learning as some others, yet his time had been so well occupied that he was on his graduation well equipped for the duties of life. After he graduated he taught one or two terms in Chelsea Academy, as assistant, and at the same time entered his name as a law student in the office of Hon. Burnam Martin in Chelsea. The last year of his study of the law was in the office of William Hebard. He was also deputy clerk of Orange county court from the time he actually entered the office of Governor Martin till he was appointed clerk of the same court in January, 1860, which office he held at the time of his death. He was admitted to the bar of Orange county in 1860, but never practiced law, confining himself to the duties of his office of clerk of the courts.

Not long after his appointment to the clerkship, he was elected justice of the peace, and held that office up to his death. During the first ten or fifteen years of his being justice, he was almost the only trial justice in Chelsea. He was distinguished by his impartiality in the trial of causes, and in the larger number of cases the parties had such confidence in him that a jury was not called for. No lawyer was ever able to appropriate him as a "pocket justice." In the later years of his life he refused to try causes as justice, and only accepted the office because it was insisted that he should hold it. He has held such of the other town offices as he could be prevailed on to accept.

He was for a great number of years a director of the Vermont Mutual Fire Insurance Company, and its Chelsea agent, and held these positions at his death.

He represented the town of Chelsea in the legislature by five elections, and was elected senator from Orange county in 1872, and lieutenant-governor in 1874. While in the legislature he was not distinguished for the number or length of his speeches, but for the reverse. He was a ready and fluent debater, but noted by the brevity and fewness of his speeches. It was his idea, and acted upon always, that to have and retain influence in the legislature he must not seem to be posted on all subjects, and so be obliged to be heard on all, thereby tiring the house of him and frittering away his influence; but to select such of the subjects coming before the assembly as were of general importance and such as he might be supposed best to comprehend, and paying his whole attention to them, leaving the rest to others. By so doing, he always commanded the ear of the house and preserved his influence to the last.

On all important matters, he was watchful and careful for the public weal, and always ready to act as circumstances might require. When he found it necessary to speak upon any question, he seldom, if ever, made a set speech. He attended to the matter in a way peculiarly his own. He had a happy faculty of being able always to say the right thing in the right place, and at the right time and briefly; touching a salient point, telling an apposite story, or in his own inimitable manner, turning the whole subject into ridicule. In this way he was generally successful where better orators and more profound men failed. His genial and hearty manner, his affability, his conversational powers, his ability as a *raconteur*, and his patent honesty, all helped to make him as popular a man as ever sat in the General Assembly of Vermont. He was a worker, leaving to those who desired to do so the making of speeches, while he did the real work. He believed personal contact with men,

and quiet persuasion, to be of more avail than windy harangues. But when he did speak, he always had something to say, and that to the point. He believed in quickly driving the nail home and there leaving it. He struck no superfluous blows.

He was the life and soul of anything he undertook. An instance of this was the legislative reunion of 1885. Although there was a good attendance of members and ex-members of both houses, yet it seemed a failure until he was made the presiding officer. This was just the place for him, and put into play his rare talents, and at once he put life and vigor into the reunion. His rare knowledge of men, his happy use of them, his fund of humor, ready wit, and his store of anecdotes, were made the best use of, so that what bade fair to be a tame affair resulted in a splendid success, and, as every one admitted, that success was almost wholly due to him.

He was able to see clearly the point of a measure, and by some apt story or pithy remark illustrate it, and thus support or defeat it. His advocacy of a measure was a host in itself, and his opposition disheartening to its supporters. He never advertised his intentions, but quietly went to work. When the right time came, in the briefest manner, in his own way, he announced his position, which generally had the effect of a thunderbolt.

He was always in good demand as a stump speaker, and, although he was not a great orator, his pertinent criticisms, fitting stories, and witty sayings, made him very effective on the stump.

For four years, from 1856 to 1859, inclusive, he was an assistant clerk of the house of representatives, and there he commenced to acquire that remarkable popularity which his later years developed. He was then the same approachable, kindly and painstaking official that he always showed himself to be in all the later responsibilities of his life. As a legislator, he had such a largeness of scope that he did not content himself with

representing his own town or county only, but considered that his duty lay in seeking to promote the best interests of the state at large. He was economical of the public funds, yet not niggardly in the right expenditure of them. He always discovered a "job," and always in fitting terms exposed it. When the worth of a measure was fully demonstrated, no one supported it more whole-heartedly than he.

He has always exhibited the same traits of character in his office of county clerk. Scrupulously exact and truthful, he has adorned the office. He has distressed no one, but has extended to all such courtesies as their necessities have required. I think I can say with truth that all who have had to do with him as clerk sincerely regret that he no longer fills that place ; but he has left it with its work well done.

The public confidence in his ability and integrity was so great that he was in constant demand as administrator or executor, and was in a large number of instances guardian of those who could not properly manage their own concerns ; and in all these trusts he fully demonstrated his fitness. Not a dollar was unaccounted for ; and he contented himself with small remuneration for services which, to my knowledge, in a great number of cases were extremely onerous and vexatious. He was the friend to whom the widow and the fatherless came with just expectations of aid, and he never disappointed them.

Mr. Hinckley was a thoroughly honest man. No one doubted his integrity or the honesty of his sentiments. He despised all sorts of crookedness and was unsparing in his denunciations of it. He was scrupulously exact in all his dealings. He loved honesty for its own sake, and gave every man his due.

He was economical and frugal in his personal expenditures, but lavish in his benevolence. No worthy man ever went from him unaided, if it was possible to help him. There was a universality in his benevolence rarely to be seen.

Men who differed from him in politics, or in any of the affairs of life ; men who opposed him in many ways,—were among

those who applied to him, and these differences never stood in the way of his aid.

His charity was unostentatious. He sought out the needy and relieved them. The poor sadly miss him. I remember as I was going to my office the morning after the news of his death came, I met a poor woman who stopped me and inquired as to his death. She was in tears, and sobbed out, "We poor shall miss him." The poor do miss him; and not only the poor, but all who have known him, miss him. We all miss his kindly face, his hearty greeting, his unvarying sympathy and his hearty assistance. He respected all alike, and his handshake was as cordial to the poor as to the rich. There was nothing assumed in his cordiality; no make-believe in his nature. If he said he was glad to see you, you might be sure of it; and he would make the contrary appear. It was this honest exhibition of good feeling, these heartfelt greetings, that so endeared him to all.

Mr. Hinckley was married November 21, 1861, to Mary Sybil Henry of Waterbury, Vermont. One child, Hattie E., was born to them. Hattie died March 11, 1872, at the age of eight years, and two years after Hattie died Mrs. Hinckley followed her. Mr. Hinckley never remarried. His surviving relatives are three sisters and one brother,—Harriet D. Hinckley; Mrs. Anna F. Prescott, wife of Charles J. Prescott of Boston, Mass., at whose house he died November 26, 1887; Mrs. Amelia M. Clough, wife of George A. Clough of Brookline, Mass.; and Charles M. Hinckley of Boston.

He was attended to the last by brother and sisters, and in his brief illness he had the ministrations of loving friends. He was on a visit to his brother and sisters in Boston, and had spent his thanksgiving with his sister, Mrs. Prescott. On Friday, at dinner at Mrs. Prescott's, he was taken with a difficulty of swallowing. He was assisted to his room and never left it. He suffered great pain, and death released him about eleven

o'clock, Saturday night, November 26, 1887. His remains were brought to his home in Chelsea, and he was buried from the Congregational church by the side of his wife and child, and was followed to his last resting-place by a large concourse of sincere mourners.

His neighbors will not soon forget him. He has been so much to us that we shall always remember his kindly and helpful ways, and his sterling worth will keep alive in our hearts pleasant recollections of our fellowship with him. He had his faults,—as who among us has not? Let his magnificent virtues cover them.

I will add a little, more personal to myself. I have already said that I first knew our friend while he was in college. Very soon after his graduation he came to Chelsea to reside, and from that time I began to know him more intimately. While he was studying law with Governor Martin, I was also studying in my father's office in the same building. When he came into my father's office, I had a room adjoining. Upon his appointment to the clerkship, he took that office and I went into my father's. Ever since we have occupied adjoining rooms, with the exception of some three years I was away. Thirty-one years of close companionship, only interrupted by my short absence, has given me the best opportunity to know and appreciate his character. For the twenty-seven years of his clerkship, excepting about six years, I was his deputy clerk. I can rightly say that if any one knew him, I did. In all my intercourse with him in all those years, I have found him to be the truest gentleman, the kindest friend, and the most honest man.

A MEMORIAL SKETCH
OF
JAMES C. BARRETT.

READ BEFORE THE VERMONT BAR ASSOCIATION, OCT. 23, 1888.

BY HON. W. G. VEAZEY.

Mr. President, and Gentlemen:—

Two things combined to cause the death of JAMES C. BARRETT, young as he was, to be one of the most impressive, especially upon his legal brethren, that has ever occurred in our state. One was the conviction of his fine ability and unusual promise as a lawyer; the other, the sudden, tragic and awful ending of his young life. But it is on account of the quality of the man, mental and moral, that he is deemed entitled to that special recognition which this association is accustomed to give to deceased lawyers who have attained high professional eminence.

The facts constituting the biography of our late brother may be briefly stated. He was born in Woodstock, Vermont, December 26, 1851, and died in Rutland, February 15, 1887. He was the fourth child in a family of nine children of Judge James and Maria L. Barrett. After attending the village schools, he spent two years under a tutor in the Latin and Greek. He became a member of the Congregational church in Woodstock

when about sixteen years of age, and through his boyhood was always sober-minded and well-behaved. He entered Dartmouth College in 1870, and graduated in 1874. Previous to entering college, he had made no manifestations that indicated superiority, or betokened for him anything beyond the common average of college students, but he gradually became an intense scholar. He once said to me that his parents had occasion to be, and he thought were, greatly discouraged about his promise as a scholar until some time after he entered college; that it was quite late before he had any real appreciation of the necessity, or the advantage, or object, of hard study; but that at last it came to him, and that he then went to work, not with reference to marks in the recitation room, although he by no means despised rank, but to train his mind to master a subject; that he then tried his best to discipline his mental faculties. By his recitation marks he stood the seventeenth from the highest in a class of sixty-three. In his junior year, he had come to be regarded as the foremost in his class as a writer and debater, and thence on he held this position. He received the first prize offered to the class in the senior year for a competitive essay on an assigned subject. One of his classmates says of him: "He grew more than any other man in our class while in college, and then and since it was apparent that he was destined to climb highest of the boys of '74."

After his graduation he began the study of law, under the instruction of his father, in the law office of Hon. William E. Johnson, in Woodstock; but at the end of two years his health failed, and under medical advice he sailed for Europe in November, 1876, going via Gibraltar to Rome; and there and in that vicinity he spent six weeks under the patronage of our distinguished minister to the Italian government, George P. Marsh. Thence he visited Florence and Venice; sailed down the Rhine and crossed over to Paris, where he spent four weeks. He then went to London, and there remained one month and enjoyed peculiar advantages by reason of the personal attentions of that

accomplished son of Vermont, Henry Stevens, trustee and acting librarian of the British Museum. He had, through the kind offices of Mr. Stevens and others, abundant opportunity for attending upon sessions of Parliament and the courts. He also visited other cities in England, Scotland and Ireland, and arrived at home in May, 1877, with health entirely restored.

He was admitted to the bar at the May term, 1877, of the Windsor county court. In July following, he settled in Rutland, and there devoted himself constantly to the practice of his profession until his death. In April, 1882, his father removed to Rutland and became his law partner, the firm name being Barrett & Barrett.

He was married at Woodstock, June 12, 1878, to Mary A. Whitney, by whom he had two children, who are still living.

It was a saying of Lord Bacon, "Death openeth the good fame, and extinguisheth envy." In reviewing the life of James C. Barrett, there is but little occasion to avail ourselves of the charitable import of this expression, because we find so little in his life to cover with the veil of charity. Mr. Barrett's professional career began, and continued, in a large town, crowded with lawyers, and in less than a decade it ended with his life. His causes were not large in number, but they embraced several of the most important that vexed the courts of the county and state during the period of his service. He was cordial, attractive, and social, with his legal brethren and immediate friends, but he did not cultivate the public for the sake of patronage; therefore the ordinary small business, as it is termed, that often comes to the young lawyer as a favor, did not reach him. He would have been glad of the business, but was sensitive about appearing to seek it. He did not lack self-confidence. I think he was conscious of power, but he despised professional begging. When opportunity came he was quick to show his strength, and he showed so well that he stepped at once above the range of the unimportant. Clients then began to seek him

for what he could do, not to confer a favor. Nothing could please him more. He had not closed his first argument in the supreme court before his analytical and reasoning power, which afterwards became so marked, was recognized. His style was convincing, rather than persuasive. He won not by art, but by logic. There was no rattle or scatter in his mental operations. Knowledge of his case, and method in presenting it, characterized all his efforts. I speak of him from personal observation, as it was my province to preside in the county courts in which were most of his causes. It was plain from the first that he had studied the law with severity, and knew it not merely as a system of rules and decisions, but as a body of principles which were harmonious and symmetrical; that, in short, he was a brilliant legal scholar, thinker, and practical logician, capable of applying legal principles to the facts of a case. He learned quickly, and his memory was accurate and tenacious. In style, he was perspicuous, energetic, and concise. It was easy to understand his point. In the advocacy of it, he was sometimes unnecessarily refined, a habit not unusual in young advocates of pertinacity. He never attempted the pathetic, and rarely the humorous. He could, but seldom did, resort to sarcasm and invective. I think this would have appeared as a quality of his style of address, in proper cases for it, had he lived longer. He had great facility of statement, and this was his effective weapon against an adversary who attempted to disguise the pivotal principle by sophistry, or who showed by his argument that he failed to see what the principle was. I have seen him effectually meet an argument of an hour by a statement of a few minutes. He was never diverted from the point by any amount of roundabout talk. The court could not overrule him by evasion without exposing its weakness. It had to yield to his claim or say squarely that it was unsound.

In *nisi prius*, he aided the court immensely by the clearness of his presentation. I never thought he pressed a point that he did not thoroughly believe in, unless he put it in the form of

suggestion and expressed his own doubt. The quality of discerning the false seemed to be ever present with him. It was noticeable in casual conversation. His friends will remember how rarely he assented to a remark that stated or implied a fact, however trivial, but which might not be, in its full import, wholly true. So in reference to any book he read, and which perhaps had received great popular approval, I have not unfrequently heard him say, "Have you read such a book?" naming it. And then he would go on and point out how the author had ignored or overlooked some fundamental principle, which utterly destroyed his theory and conclusion. The dress, however fine, although it had misled the public generally, failed to obscure from his view the miserable fallacy underneath. It was at such times, and whenever there was an attempt at "whitewash" of individuals or institutions, that contempt and biting sarcasm appeared.

Notwithstanding Mr. Barrett's devotion to the law as a science, and to its practice as a means of livelihood, his reading and thinking were by no means limited to it. And, although he never held or sought a political office, his interest in public affairs was intense. He appreciated the advantages of our political system, but was sharp to discern defects in administration. His travels abroad had, perhaps, led him to study and reflect upon the distinguishing features of the older civilizations of Europe from the newer civilization of America. He recognized that we are not yet a nation of learned men, like Germany, nor of elegant writers, like France, nor of statesmen, poets and thinkers, like Great Britain; that our people had been too much engaged in practical affairs to allow of that degree of culture here which in Europe is common, in the educated class. Therefore he dwelt with great interest on all the plans and efforts in our country to put education in every department of learning on a higher plane. This was especially noticeable in respect to the law. He hailed every move in this direction with delight. He approved of Bar Associations. He believed

in law reformatory discussions. He wanted to bring large law libraries within the reach of lawyers, with little expense to them. His love of the law and of lawyers was like a controlling passion. What can be done to secure more learned and better lawyers, was a constant query. His ambition to excel in his profession was great, but he was absolutely free from envy. He was sure to commend a fine display in others. "How he loomed up! it seemed as if he grew a foot every minute," was a frequent remark of his upon the effort of a brother. The high standing of a lawyer did not affect his judgment. If the quality of the effort was superior, he recognized it, from whatever source it came.

Mr. Barrett made some notable briefs and arguments in the supreme court. In the famous case of *Langdon and Others v. Vermont & Canada Railroad Company and Others*, he appeared for the Trust Company of Worcester, Mass., at the General Term, 1879, when but two years at the bar, and again in the same case in 1882. I have heard the remark made, and even by some of the eminent lawyers who participated in that great and prolonged debate, that young Barrett was not surpassed by any of them.

In 1880, and again in 1882, he prepared the briefs for the plaintiff and argued the celebrated scrip case, as it was termed, of *Chaffee v. Rutland R. R. Co.* His subsequent cases of great importance were those of the *Rutland R. R. Co. v. Clement & Sons*, known as the stock suit, heard at the General Term, 1885; and *Tillotson v. Prichard*, General Term, 1886. These cases were so recent that they will be readily recognized as leading cases during the period; indeed, perhaps none of more importance have ever come before our supreme court, and I think in every instance Mr. Barrett's positions were substantially sustained in the decisions. He also argued several other cases of less consequence, but never failed to show the same thoroughness of preparation and the same quality of presentation that he exhibited in the causes named. But I think the cause in which

he best displayed his qualities as a lawyer, to which I have referred, was in the jury trial of the case of the *Rutland Railroad Co. v. Page*, in the Rutland county court, at the March Term, 1885. In many respects, as a jury trial, it is doubtful if this cause has a parallel in New England. It was an action of general assumpsit, and the plea was the general issue. The *ad damnum* in the writ was two million dollars. The plaintiff's specifications contained 339 items, averaging \$13,153.38 each, some being above \$100,000, several above \$50,000, and many above \$25,000. The defendant filed a declaration in offset. His specifications contained 149 items, averaging over \$8,000 each. The items of the plaintiff's specifications stood upon such distinct grounds that each one practically made an independent case. The trial incidentally involved inquiry into the trust and corporate administration of the Rutland railroad for twenty years, and the investigation of the receipts and disbursements of over \$20,000,000. The array of counsel on both sides was very large and able. The trial began March 17th, and the case was given to the jury on Monday, May 11th. The verdict was rendered on Thursday, May 14th, the trial covering a period of eight weeks and two days. No intermission occurred except the usual recesses. The average length of session was about six hours per day. Mr. Barrett had been the principal attorney in the preparation for the trial, and had the leading management in the trial for the plaintiff. He had been at the bar but seven years. He was present at every session; put in much the larger portion of the plaintiff's case; cross-examined most of the leading witnesses of the defendant; argued, either alone or with some one of his associates, nearly every legal proposition that was debated in the course of the trial, and made the closing argument for the plaintiff to the jury. The account books and documents referred to and used on the trial filled several large trunks and chests. The plaintiff's claim imported mal-administration of a trust, and the defence therefore involved personal vindication, as well as the assertion of property rights. The

controversy exacted every quality of the best lawyership from the beginning to the end. The counsel for the defendant were among the ablest in and outside the state. They had the aid of a client of the largest experience, and of superior ability. The legal questions that arose were almost numberless, and were contested with a pertinacity and skill never surpassed.

It was in such a trial that this young lawyer was tested, and I think all persons engaged in the case agree that it was a marvel how well he stood the test. I do not recall that he in a single instance asked for delay to meet any question that was raised, or that he hesitated a moment for an answer, or that he appeared to be unprepared to discuss the question intelligently and exhaustively. The case involved so much investigation of books and papers, and took on so many phases, that counsel were as busy during recesses as during the sessions, but Mr. Barrett never showed exhaustion. He was slight of build, and did not look strong, yet his physical as well as mental resources seemed to be inexhaustible. He told me at the close of the trial, and after having argued to the jury for six hours, that he felt better than when the trial began. I doubt if his display, in that trial, of professional alertness and force, and of mental and physical resources and endurance, was ever excelled. And I am glad to have this opportunity to pay this tribute to that young man, whose early death, as I think, cut short a career of the greatest professional excellence. I do not mean that others might not have excelled him here and there in his varied work in that long trial, but who could have done so much as he did, and done it better? He of course lacked that superior judgment which comes from wider experience. Jury advocacy was by no means his best field, but his style was well adapted to the case alluded to.

But I am making this paper too long. I could tell how delightful he was in his family, where I saw him very often, sometimes daily; how happy he was in the building up of a home for them; how faithfully he met the duties of the elder brother to

whom the younger children looked for advice and help ; how grandly he stood, the never-failing prop of parents in their declining years. I could speak of his absolute, aye, almost severe integrity ; of his great moral courage, and fearless independence. I could tell how we, his friends, the whole community, woefully sorrowed when he suffered that premature and fearful death. I will only tell you how bravely he met it. It would be horrible to describe his injury. All were dazed but him. Impaled, certain of death, perhaps immediate, his self possession was as marked as in the court room. Every direction came from him in perfect composure. When borne to his home, he says : "This is my home ; this is my room, I recognize it all. Bring the children." But upon this scene we must drop the curtain. Then the physicians come and say it is death. We knew it before, but the awful word crushes all except him. Retaining consciousness to the last, he lingers through the night, and the next day, unmurmuring, trustful, confident. Friends come and go. The multitude line the street, tearfully watching, and hoping against hope. A few hours before the end, he expressed a desire to see me. Talking was difficult and hurtful. He grasped my hand firmly, and only said : "My dear friend, you," referring to the bar, "must take my little boy by sort of legal intendment." The lawyer and father to the last. His death confirmed the opinion of Sir Thomas Browne, who declared : "Marshaling all the horrors of death, and contemplating the extremities thereof, I find not anything therein able to daunt the *courage* of a *man*, much less a *well-resolved Christian*."

His last expression on earth was : "Oh, God, through Jesus Christ I come."

There we may safely leave him.

APPENDIX.

REPORT OF SPECIAL COMMITTEE

—ON—

PRESERVATION OF BILLS OF EXCEPTIONS, BRIEFS AND OPINIONS, HEARD AND DETERMINED IN THE SUPREME COURT OF VERMONT.

TO THE BAR ASSOCIATION :

The committee to whom was referred the matter of preservation of Bills of Exceptions and Briefs, and the Opinions in Cases Heard and Determined in the Supreme Court, under the motion of Mr. Heath, beg leave to report that they have considered said matter, and find that in their opinion much advantage would accrue to the profession if all the bills of exception and briefs and opinions could be kept and preserved in some tangible form, in ready reach of the bar of the state, and that thereby much labor would be saved to the profession and a more complete understanding of the points determined in each case by the court would be possible in all subsequent cases in which the same or analogous points should arise.

We therefore recommend the adoption of a rule of the supreme court as follows, to be numbered :

ART. —. Each attorney in every case shall, before he begins his argument, deliver to the clerk a full copy of his brief ;

and at the end of each term said clerk shall transmit said briefs and the bills of exceptions in the case to the state librarian, to be by him kept in the state library as the property of the state, to the end that said librarian may have such exceptions and briefs properly arranged and bound in proper and convenient volumes for the use of the bar.

And we recommend that, in case the said association shall adopt this report, the same shall be presented to the supreme court this present term to be adopted as a rule uniform throughout the state.

All of which is respectfully submitted,

CHARLES H. HEATH, }
GEO. W. HARMAN, } *Committee.*
GILBERT A. DAVIS, }

MONTPELIER, Oct. 24, 1888.

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VERMONT BAR ASSOCIATION.

MEMBERS, PROCEEDINGS, PAPERS AND
ADDRESSES.

1889.

VOL. II. No. 4.

BARRE:
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1890.

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 HAMILTON S. PECK, Burlington..... Chittenden County, April Term, 1873
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 B. E. BULLARD, Hyde Park..... General Term, 1889
 FREDERICK P. CARLETON, Montpelier..... General Term, 1889
 JOHN W. GREGORY, Waitsfield. Washington County, September Term, 1878

MEMBERS,

WITH RESIDENCE AND COUNTY AND TERM OF ADMISSION TO BAR.

ADAMS, HENRY C.	St. Albans.	Franklin, December, 1854.
ALEXANDER, M. H.	Jericho.	Franklin, April, 1883.
ALFRED, FRANK E.	Newport.	Franklin, September, 1876.
ALLBE, ALBERT M.	Springfield.	Windham, April, 1843.
ASHLAND, EZEKIEL A.	St. Albans.	Franklin, October, 1887.
BAKER, JOEL C.	Rutland.	Rutland, March, 1862.
BALDWIN, F. W.	Barton.	Lamoille, December, 1872.
BALLARD, GEORGE A.	Fairfax.	Franklin, September, 1861.
BALLARD, HENRY	Burlington.	{ Albany, N.Y., May, 1863.
BARRETT, JAMES	Rutland.	{ Chittenden, September, 1863.
BARRETT, JAMES C.*	Rutland.	Windsor, December, 1840.
BARRETT, RUSH P.	Rutland.	Windsor, May, 1877.
BATES, HENRY C.	St. Johnsbury.	Windsor, December, 1878.
BATCHELDER, JAMES K.	Arlington.	{ Coos, N.H., November, 1868.
BATCHELDER, WILLIAM	Windsor.	{ Orleans, June, 1866.
BELDEN, HENRY C.	Minneapolis, Minn.	Bennington, June, 1866.
BINGHAM, M. A.	Essex Junction.	Windsor, May, 1872.
BISBEE, EDWARD W.	Barre.	Caledonia, December, 1863.
BLISS, WILLIAM H.	Middlebury.	Lamoille, May, 1868.
BLODGETT, HARRY	St. Johnsbury.	Washington, September, '71.
BOLLES, FRANCIS A.	Bellows Falls.	Orange, December, 1877.
BOYCE, OSMAN B.	Barre.	Caledonia, June, 1873.
BOYCE, WILLIAM A.	Barre.	Windham, April, 1872.
BOYDEN, NELSON L.	Randolph.	{ Albany, N.Y., March, 1871.
BRIGHAM, WALDO	Hydepark.	{ Essex, September, 1871.
BIGGS, GEORGE	Brandon.	Washington, March, 1869.
BROMLEY, JEROME B.	Castleton.	Orange, June, 1865.
		Lamoille, 1857.
		Rutland, September, 1868.
		Rutland, September, 1849.

BROWN, ROME G.	Minneapolis, Minn.	Washington, October, 1887.
BROWNELL, C. W. Jr.	Burlington.	Chittenden, September, 1872.
BUCK, MYRON	St. Albans.	Franklin, April, 1854.
BURKE, JOHN C.	Albany.	Orleans.
BURLESON, GEORGE W.	East Fairfield.	Franklin, September, 1875.
BURNAP, WILDER L.	Burlington.	Chittenden, September, 1866.
BUTLER, F. M.	Rutland.	Windham, March, 1877.
BUTTERFIELD, A. AUGUSTUS	Jacksonville.	Windham, April, 1867.
BUTTERFIELD, O. E.	Wilmington.	Windham, April, 1867.
CAHOON, GEORGE W.	Lyndon.	Caledonia, June, 1855.
CARLETON, HIRAM	Montpelier.	Washington, September, '65.
CARR, JOHN L.	Barton.	Orleans, September, 1878.
CHAMBERLIN, PHINEAS *	Bradford.	Orange, June, 1877.
CHASE, ISAAC N.	East Fairfield.	
CLARKE, CORNELIUS W.	Chelsea.	Orange, January, 1849.
CLARK, OSMAN D.	Montpelier.	Washington, March, 1879.
CROSS, ALBERT P.	St. Albans.	Franklin, April, 1869.
CUSHMAN, JUDSON E.	West Randolph.	
DALE, GEORGE N.	Island Pond.	Washington, March, 1856.
DANA, CHARLES S. *	St. Johnsbury.	Caledonia, December, 1840.
DANA, EDWARD	Rutland.	Rutland.
DARLING, J. K.	Chelsea.	Orange, June, 1874.
DAVENPORT, CHARLES N. *	Brattleboro.	Windham, April, 1854.
DAVIS, GILBERT A.	Windsor.	Windsor, May, 1859.
DAVIS, PARK	Albany, N.Y.	Windham, September, 1864.
DEAVITT, THOMAS J.	Montpelier.	Washington, March, 1866.
DENISON, JOSEPH D.	Royalton.	Windsor, May, 1869.
DICKERMAN, J. E.	Newport.	Orleans, June, 1854.
DICKEY, ASA M.	Bradford.	Orange, June, 1845.
DICKEY, GEORGE A.	Bradford.	Caledonia, June, 1877.
DILLINGHAM, PAUL	Waterbury.	Washington, March, 1823.
DILLINGHAM, WILLIAM P.	Waterbury.	Washington, September, '66.
DUNNETT, ALEXANDER	St. Johnsbury.	Orange, June, 1877.
DUNTON, WALTER C.	Rutland.	Rutland, September, 1858.
DURANT, LUTHER L. *	Montpelier.	Washington, November, '50.
EDDY, CHARLES B.	Bellows Falls.	Windham, April, 1858.
EDDY, JONATHAN G.	Brattleboro.	Windham, April, 1869.
EDMUNDS, GEORGE F.	Burlington.	Chittenden, March, 1849.
EDSON, H. G.	St. Albans.	Franklin, September, 1844.
EDWARDS, JOHN L.	Newport.	Orleans, June, 1843.
EMERY, CURTIS S.	Chelsea.	Orange.

ENRIGHT, JOHN J.	Burlington.	Chittenden, 1883.
FARNHAM, ROSWELL	Bradford.	Orange, January, 1857.
FARRELL, PATRICK J.	Newport.	Orleans, October, 1887.
FARRINGTON, WILLARD	St. Albans.	Franklin, September, 1862.
FAY, ALLAND G.	Montpelier.	General Term, 1884.
FIELD, HENRY G.	Oakland, Cal.	Windham, September, 1871.
FIFIELD, BENJAMIN F.	Montpelier.	Washington, March, 1858.
FISK, H. C.	Morrisville.	
FOSTER, JOHN G.	Derby Line.	
FREEMAN, D. G.	Swanton.	Franklin, September, 1876.
FRENCH, WARREN C.	Woodstock.	Windsor, May, 1844.
GARDNER, ABRAHAM B.*	Bennington.	Rutland, April, 1844.
GARY, F. E. H.	Boston, Mass.	Washington, September, '82.
GLEASON, CARLISLE J.	Montpelier.	Washington, September, '58.
GLEASON, S. M.	Thetford Centre.	Orange, December, 1861.
GLEED, PHILIP K.	Morrisville.	Lamoille, December, 1859.
GORDON, TRUMAN R.	Montpelier.	Washington, September, '77.
GROUT, JOSIAH	Derby.	Orleans, 1865.
GROUT, THEOPHILUS	Newport.	Orleans, September, 1871.
GROUT, WILLIAM W.	Barton.	Caledonia, December, 1857.
HALE, F. D.	Lunenburg.	
HALL, ALFRED A.	St. Albans.	Franklin, April, 1873.
HARMAN, GEORGE W..	Bennington.	Rutland, September, 1833.
HARMAN, HENRY A.	Rutland.	Bennington, December, 1871.
HARVEY, O. F.	West Concord.	Iowa, in 1857.
HARVEY, RONEY M.	Topsham.	Orange, December, 1870.
HASELTON, SENECA	Burlington.	
HASKINS, KITTREDGE	Brattleboro.	Windham, April, 1858.
HEATH, CHARLES H.*	Montpelier.	Lamoille, December, 1859.
HEBARD, SALMON B.	Chelsea.	Orange, December, 1861.
HEYWOOD, HENRY	Lancaster, N. H.	Essex, March, 1860.
HOGAN, CHARLES P.	Sheldon.	Lamoille, May, 1868.
HOWE, CHARLES L.	Rutland.	Rutland, March, 1882.
HUNTON, AUGUSTUS P.	Bethel.	Washington, April, 1837.
HUSE, HIRAM A.	Montpelier.	{ Albany, N.Y., May, 1867.
IDE, HENRY C.	St. Johnsbury.	{ Orange, June, 1869.
JOHNSON, WILLIAM E.	Woodstock.	Caledonia, December, 1870.
KELTON, OTIS N.	Montgomery.	Windsor, May, 1865.
KEMP, HARLAN W.	Montpelier.	Franklin, September, 1877.
KENDALL, P. REDFIELD	Rutland.	Washington, September, '80.
		Orleans, September, 1873.

KENFIELD, W. H. H.	Cambridge.	Lamoille, December, 1863.
KENNEDY, GEORGE W.	Waterbury.	
LAIRD, FRED L.	Montpelier.	Washington, October, 1887.
LAMSON, JOSEPH P.	Cabot.	Lamoille, April, 1860.
LAWRENCE, GEORGE E.	Rutland.	Addison, June, 1868.
LAWRENCE, L. L.*	Burlington.	Chittenden, April, 1866.
LESLIE, CHARLES BRIGHAM	Wells River.	Orange, June, 1843.
LIVINGSTON, JOSIAH O.	Montpelier.	Lamoille, May, 1861.
LUCIA, J. H.	Montpelier.	Addison, June, 1868.
MANN, HOSEA, Jr.	Wilmington.	Windham, March, 1882.
MANSUR, Z. M.	Island Pond.	
MARTIN, JAMES L.	Brattleboro.	{ Albany, N.Y., May, 1869. Bennington, June, 1869.
MARTIN, JOSEPH G.	Manchester.	Windham, April, 1874.
MAY, ELISHA	St. Johnsbury.	Caledonia, December, 1868.
MCFEETERS, EMMETT	Enosburgh Falls.	Franklin, September, 1880.
MCGETTRICK, F. W.	St. Albans.	
MELDON, PAT M.	Rutland.	Rutland, September, 1882.
NICHOLS, ALBRO F.	St. Johnsbury.	Caledonia, June, 1873.
NOBLE, GUY C.	St. Albans.	Franklin, September, 1861.
ORMSBEE, E. J.	Brandon.	Rutland, March, 1861.
OVIATT, HENRY	Montpelier.	Washington, March, 1875.
PAGE, J. W.	Jeffersonville.	
PALMER, EDWIN F.	Waterbury.	Washington, September, '64.
PAUL, NORMAN	Woodstock.	Windsor, December, 1862.
PECKETT, JOHN B. Jr.	Bradford.	Orange, June, 1882.
PHELPS, EDWARD J.	Burlington.	Addison, December, 1843.
PINGREE, SAMUEL E.	Hartford.	Windsor, December, 1859.
PITKIN, CLARENCE H.	Montpelier.	Washington, March, 1872.
PLUMLEY, FRANK	Northfield.	Lamoille, May, 1869.
POLAND, LUKE P.*	Waterville.	Lamoille, December, 1836.
PORTER, CHARLES W.	Montpelier.	Washington, September, '74
POWELL, E. HENRY	Richford.	Franklin, September, 1866.
PROCTOR, REDFIELD	Proctor.	Windsor, May, 1860.
PROUT, JOHN	Rutland.	Addison, June, 1839.
PROUTY, CHARLES A.	Newport.	
READ, LAVANT M.	Bellows Falls.	Windham, April, 1869.
REDINGTON, LYMAN W.	Rutland.	{ Milwaukee, Wisconsin, 1871. Rutland, September, 1873.
ROBERTS, DANIEL	Burlington.	Rutland, September, 1832.
ROBERTS, ROBERT	Burlington.	Chittenden, September, 1871.
ROGERS, D. ALLEN *	Wells River.	Coos, N. H., May, 1854.

ROWELL, JOHN W.	West Randolph.	Orange, June, 1858.
ROWELL, WILLIAM R.	North Troy.	Franklin, September, 1870.
ROYCE, HEMAN S.	St. Albans.	Franklin, April, 1844.
ROYCE, HOMER CHARLES	Vergennes.	Franklin, October, 1887.
RUSSELL, J. W.	Burlington.	Chittenden, September, 1871.
RUSTEDT, H. E.	Richford.	Franklin, April, 1873.
SAFFORD, ALFRED G.	Washington, D. C.	Franklin, September, 1857.
SEAUER, THOMAS O.	Woodstock.	Windsor, December, 1864.
SENER, JOHN H.	Montpelier.	Washington, March, 1879.
SHAW, WILLIAM G.	Burlington.	Chittenden, March, 1853.
SHURTLEFF, STEPHEN C.	Montpelier.	Washington, March, 1863.
SMALLEY, B. B.	Burlington.	Chittenden, September, 1863.
SMILIE, MELVILLE E.	Montpelier.	Washington, March, 1866.
SMITH, E. CURTIS	St. Albans.	Franklin, September, 1877.
SMITH, EDGAR W.	Wells River.	Orange, December, 1872.
SMITH, F. WALWORTH	Leadville, Col.	Franklin, September, 1877.
SMITH, HENRY H.	Rutland.	Rutland, September, 1858.
SMITH, WARREN H.	Rutland.	Orange, June, 1843.
SMITH, WALTER P.	St. Johnsbury.	Lamoille, May, 1869.
SPENCER, GEORGE B.	Rutland.	
STAFFORD, WENDELL P.	St. Johnsbury.	Caledonia, June, 1882.
STANTON, ZED S.	Roxbury.	Washington, March, 1880.
START, HENRY R.	St. Albans.	Franklin, April, 1867.
STEVENS, HIRAM F.	Minneapolis, Minn.	Franklin, September, 1874.
STEWART, JOHN W.	Middlebury.	Addison, December, 1856.
STEWART, W. D.	Bakersfield.	Franklin, April, 1872.
STICKNEY, WILLIAM B. C.	Bethel.	
STICKNEY, WILLIAM W.	Ludlow.	Windsor, December, 1878.
STODDARD, E. W.	Brattleboro.	
STOWE, GEORGE L.	Chelsea.	Chittenden, September, 1875.
SWININGTON, F. G.	Rutland.	Rutland, March, 1878.
TAFT, ELIHU B.	Burlington.	Chittenden, April, 1873.
TARBELL, CHARLES P.	South Royalton.	Orange, 1870.
TENNEY, A. D.	St. Albans.	Franklin, September, 1871.
THOMPSON, L. H.	Irasburgh.	Orleans, February, 1871.
TYLER, JAMES M.	Brattleboro.	Windham, September, 1860.
TYLER, MILTON R.	Rochester, Minn.	Franklin, September, 1860.
VEAZEY, W. G.	Rutland.	{ Albany, N.Y., June, 1860 Windsor, December, 1860.
WALES, GEORGE W.*	Burlington.	
WALES, TORREY E.	Burlington.	Chittenden, March, 1845.

WALKER, ALDACE F.	Rutland.	{ New York City, May, 1867.
WALKER, WILLIAM H.	Ludlow.	{ Rutland, September, 1873.
WATERMAN, ELEAZER M.	Jamaica.	Windsor, December, 1861.
WATSON, JOHN H.	Bradford.	Windham, September, 1863.
WILDS, CHARLES M.	Middlebury.	Orange, December, 1877.
WILBUR, L. F.	Burlington.	Addison; June, 1880.
WILLARD, ASHTON R.	Boston, Mass.	Lamoille, December, 1856.
WILSON, JAMES J.	Bethel.	Washington, March, 1882.
WILSON, WILLIAM D.	St. Albans.	Windsor, May, 1858.
WING, GEORGE W.	Montpelier.	Franklin, June, 1857.
WING, JOHN G.	Montpelier.	Washington, March, 1868.
WING, JOSEPH A.	Montpelier.	Washington, September, '80.
WOODBIDGE, F. E.	Vergennes.	Washington, April, 1836.
YOUNG, JOHN	Newport.	Addison, December, 1843.
		Orleans, June, 1862.

HONORARY MEMBERS.

THE JUDGES OF THE UNITED STATES COURTS IN THIS STATE.

THE JUDGES OF THE SUPREME COURT.

BENNETT, EDMUND H.	- - - - -	Taunton, Mass.
EVARTS, WILLIAM M.	- - - - -	New York City
HALL, HILAND	- - - - -	Bennington
POMEROY, JOHN M.*	- - - - -	Burlington
STOUGHTON, E. H.*	- - - - -	New York City

* Deceased.

TREASURER'S REPORT.

HIRAM CARLETON, *Treasurer*,

In Account with the VERMONT BAR ASSOCIATION:

1888.

DEBIT.

October 24.	To deposit in Burlington Savings Bank.....	\$354 08
	deposit in Montpelier Savings Bank and Trust Co.	458 75
	cash received for dues, admission fees, and binding reports	352 40
	interest on deposits.....	30 94
		\$1196 17

1888.

CREDIT.

By paid	annual banquet	\$127 50
	balance on reports.	60
	for cablegram	1 17
	printing and binding reports.....	81 62
	printing and stationery.....	28 34

1889.

October 23.	Balance cash assets.....	956 94
		\$1196 17

ASSETS, OCTOBER 23rd, 1889.

Cash deposited in Burlington Savings Bank to the credit of Hiram Carleton, Treasurer, book 9943.....	\$370 18
Cash deposited in Montpelier Savings Bank and Trust Company to the credit of Hiram Carleton, Treasurer, book 5442....	586 76
Total assets	\$956 94

SUMMARY OF PROCEEDINGS.

1889.

- President Gleed called the Association to order at the Court House in Montpelier, October 22, 1889, at 7.30 P. M., and the records of the last regular meeting were read and approved. The President read his annual address on the theme "Trial by Jury." Ashton R. Willard of Boston, Mass., contributed a memorial paper upon Charles H. Heath, which was read by the Secretary, owing to the inability of Mr. Willard to be present.

The Committee on Admissions nominated for membership James M. Slade of Middlebury, H. S. Peck and D. J. Foster of Burlington, V. A. Bullard of Underhill, and John V. Sprague of Barre, and a ballot being had they were severally elected.

Elihu B. Taft moved that a committee of one from each county be appointed by the President to nominate officers for the year ensuing. Adopted; and Charles M. Wilds, J. K. Batchelder, H. C. Bates, V. A. Bullard, H. R. Start, J. W. Page, J. D. Denison, John Young, P. R. Kendall, A. G. Fay, L. M. Read, and W. E. Johnson were appointed such committee. The Treasurer submitted his annual report, from which it appeared there was a balance to the credit of the Association of \$956.94. The report was accepted, adopted, and ordered printed with the proceedings. On motion, Hiram Carleton was appointed to confer with Mrs. Heath and obtain the use of the steel plate of Mr. Heath for the purpose of publishing his portrait in connection with the sketch of Mr. Willard. P. R. Kendall was appointed a committee to obtain the use of the plate of the late

Timothy P. Redfield, that his portrait might be published with the proceedings. On motion of Elihu B. Taft, the Association voted to invite Jonathan Ross to prepare a paper on the late L. P. Poland, and if possible to obtain the use of the plate to print the portrait to accompany such address. On motion of Daniel Roberts, the Secretary was authorized to procure the portraits of all past presidents of the Association and such other members as could be obtained. The President presented communications from the American and National Bar Associations, and on motion it was voted to nominate three delegates to each Association. The Association then elected as such delegates, S. C. Shurtleff, W. P. Dillingham, and J. K. Batchelder to the American Bar Association, and L. H. Thompson, E. L. Waterman, and Henry C. Bates to the National Bar Association. The committee to nominate officers for the year ensuing made their report and the same was adopted, and the persons named severally elected to the positions nominated. (See list, *ante*.)

C. W. Porter proposed the following resolution, which was adopted:—

Resolved, That the Secretary procure, by exchange of the reports of this Association or otherwise, as far as possible, the reports of the American and National Bar Associations, and the several States and cities, and have the same placed and preserved in suitable book-cases, to be procured by a committee consisting of the President, Secretary, and Treasurer, and located where they may determine upon.

P. R. Kendall offered the following resolution:

Resolved, That in the case of Charles F. Bridge, an attorney and counsellor at law, duly admitted and practising in the State of New York, the Bar Association recommends that the rule as to residence in this State for six months and practice for one year be suspended, and that he be admitted upon motion at the present term.

J. K. Batchelder moved to amend by adding thereto "provided on examination he shall be recommended by the examining committee." The amendment was accepted, and after discussion by Laird, Thompson, Shurtleff, C. W. Brownell, Jr.

G. W. Harman and J. H. Senter, the resolution was rejected.

Daniel Roberts, for the Committee on Jurisprudence and Law Reform, submitted the following report. (See Appendix.) The report was accepted; and on motion of Mr. Senter, the whole matter was referred back to the committee, with instructions to print the bill and send a copy to each member of the Association at least one month before the next annual meeting.

On motion of G. A. Davis, G. W. Harman was appointed to present to the court the matter of Mr. Heath's resolution, presented at the last meeting, as to the preservation of briefs, etc. P. R. Kendall presented a communication from Charles P. Harris, relating to the matter of ballot reform. (See Appendix.) John Young moved that a committee be appointed to examine the matter of the improved system of balloting, and, if deemed advisable, that such committee report by bill at the next annual meeting. After discussion by Daniel Roberts, John H. Senter, C. W. Porter and others, Mr. Porter moved to lay the communication and motion of Mr. Young upon the table; adopted.

The Committee on Admissions made a further report, nominating for membership John W. Gregory of Waitsfield, Charles H. Darling and Edward L. Bates of Bennington, and Orion N. Barber of Arlington, and they were duly elected.

Mr. Senter moved that the committee appointed on Mr. Heath's motion in 1888, to procure legislation in the matter of appointing stenographers be re-appointed, and that such committee be requested to prepare a bill and present the same to the next legislature. After discussion by Mr. Senter, Daniel Roberts and John Young, the motion was rejected. The President then appointed the standing committees. A. G. Fay for the Committee on Admissions made a report nominating Mervin A. Pratt, A. D. Kimball, Frederick P. Carleton and E. H. Edgerton of Montpelier, Joseph C. Jones of Rutland, Richard A. Hoar of Barre, B. E. Bullard of Hyde Park, F. D. E. Stowe of Brattleboro, and they were severally elected. The Association then adjourned without day.

THE PRESIDENT'S ADDRESS.

THE JURY SYSTEM IN LIGHT OF MODERN EXPERIENCE.

Gentlemen of the Vermont Bar Association:

Our society finds its right to exist in its ability to promote professional improvement. The ultimate object of our profession is the administration of justice in the affairs of men.

These affairs ought to be so conducted by men themselves that no disputes and hence no lawsuits could arise. But such is not human experience.

Since the day of those strange and malicious proceedings against the innocent and inexperienced pair in Eden, by which they were induced to misconceive the source of their title and to enter upon an unequal contest with the true landlord and were finally "snaked" out of their inheritance, actions of ejectment and suits before the law, in the gates, the market places, the forums and the halls of court have marked every step of civilization.

Human limitations, imperfections, ambitions and vices, out of which these disputes so naturally spring, always have—and alas still do—enter into, and alas too often sadly mar and injure the machinery of the court itself. Hence the question whether any improvement can be made in the mode of administering justice in the affairs of men is always open to debate.

The principles of universal justice, because they have their origin in the bosom of Deity, may be and have been settled once and forever; not so with the means of their enforcement.

If "nothing is settled that is not rightly settled," as Emerson says, then clearly we can conclude, from the frequent changes in the past of the mode of trial, that the best has not been reached.

No one century, no one country, can as well determine what is the best machinery for the administration of justice as the century and country directly interested.

I assume that the Bench and Bar of Vermont are wiser than laymen by reason of their daily experience in court; are anxious to promote the public good in their professional work; are familiar with the methods of other states and nations, and have been enlightened by the recorded successes and failures of the past,—and that therefore they are the best arbiters of what methods would most certainly administer justice in the affairs of her people. Hence, after much hesitation, I have decided to summon trial by jury, in civil matters, to the bar of this Association.

I ask you to examine the merits of this factor of Vermont jurisprudence as in your own experience you have come to know them, and in the light of all other methods of trying civil cases known in our state.

I know that he who dares to insinuate that the long honored and much praised institution known as trial by jury is not the best method of reaching the truth in complicated questions of fact, may be glibly or madly set down as of Butler's

Sect whose chief devotion lies
In old perverse antipathies;
In falling out with that or this,
And finding something still amiss.

In a trial, nothing should be allowed to happen by chance. Hence, when a person on trial for witchcraft was cast into a stream and declared guilty of the crime if she escaped and innocent if she was drowned, the world witnessed an extreme case where, as in trial by battle, chance or physical endurance was the sole arbiter. Trial by jury is superior to such trials because chance is to some degree supplanted by the certainty of science.

In trial, nothing ought to be allowed to happen without an adequate and uniform cause. But in the decisions of biased and corrupt judges the world has witnessed the most harmful results, in court, without adequate cause. Trial by jury is superior to such trials, because biased courts have often met equally biased juries and corrupt judges have been held in check by the twelve laymen in the jury box.

But in our state, so long as an intelligent and virtuous people make the court and elect the judges once in two years, there is nothing to fear from the latter source of trouble—unfairness or corruption on the bench. But the former vice, namely, results reached by chance and not by science acting through adequate causes, still remains, to the terror of suitors and the dishonor of the courts.

Chance has so long and so permanently performed its antics in every hall of justice, with the jury as its chief agent, that, in the estimation of the business world, uncertainty rather than certainty characterizes the result, and many proverbs have been coined to indicate this unfortunate condition of things.

This contemptuous estimate of trial by jury, by reason of its uncertain results, reaches our profession as a science and us as its sponsors. Too many clients have left the court-house and the office feeling as the Irishman did, who, when asked by his attorney to pay him a bill of six and eight pence denied that he

owed it. "Not owe it me? Yes, you do. It's for the opinion you had of me." "That's a good un, indeed," rejoined Pat, "when I never had any opinion of you in all my life."

But, in all soberness, the opinion now entertained by the business world of our professional work and the profession itself as a science is sadly humiliating and ought to be corrected as far as possible by the removal of causes or sources of chance or uncertainty.

An old lawyer was once asked by a lady what were the requisites of a successful lawsuit and received the following reply: "In the first place you must have a good cause; secondly, a good attorney; thirdly, a good counsel; fourthly, good evidence; fifthly, a good jury; sixthly, a good judge; and lastly and chiefly, good luck."

Now, I am at war with the old lawyer's "lastly and chiefly, good luck." In my opinion, we shall take a long step toward the removal of the pernicious effects of good and bad luck—results without adequate causes—in civil trials in this age of a business life, running at the speed of lightning, if we find some more cultured and experienced tribunal to settle the facts than we can expect to find in twelve inexperienced laymen.

In theory at least, the application of settled legal principles to the affairs of business life, however complex, is largely a science, and ought to be as certain and uniform in its results as any other human science.

But we can nearest reach this result, in practice, by excluding from the machinery of the court every institution which naturally tends to uncertainty, and in substituting therefor some other agency, which, by reason of experience and culture in the science, can be depended upon for certainty and uniformity in its results.

But I am told that the attempts to reduce proceedings in court to the certainty of a science—especially in cases of

disputed facts—may be all right as an ideal, but impossible in practice.

It must be granted that the principle here contended for is a just one; that it contains an ideal truth and is inherently right.

Nothing less than this is demanded by the oldest requirements of even primitive courts. "Ye shall do no unrighteousness in judgment, but in righteousness shall thou judge thy neighbor."

But what is admitted when we listlessly mutter, it is useless to attempt to carry this principle into practice? The admission is that practice cannot, and therefore must not, be wholly right; that it cannot be expected to aim at an ideal; that it is too much to expect that the actual trial of causes in court should be always regulated by such rules as to free them from chance or luck or mistake and to hold them to a steady and uniform result—effects following only from uniform and adequate causes.

But if in this admission is found the claim that what is practical to-day with our present machinery of trial by jury is to be our ultimate standard; decreeing, thus far shalt thou go and no farther, then the admission can not be granted; for it hopelessly reduces the science of legal practice to a Pandora's box of perplexing doubts, chances and evils.

But if the scope of the admission be this,—that because of human limitations in bench and bar as well as jury the approach to the beautiful proportions of perfection in the science of certainty in court must be slow, yet this ideal must be held steadily before our face as alone absolutely right and to be pursued with arduous zeal and as nearly reached as possible,—then I grant that the admission is reasonable and just.

True it is that, while the bench and bar are the natural instructors and leaders of the people in all departments of jurisprudence, they can not, in the practical business of the profession, keep very much in advance of public sentiment.

The people themselves must be taught to appreciate the genuine good faith of bench and bar in their purpose to enforce, in all matters of litigation, their highest ideals as to what machinery is most likely to reach the true result. Then we shall continue to hold the popular respect, which sometimes is almost denied us.

In frankly making the confession that our theory is ahead of our practice, we only do what all branches of honest science are compelled to do. A perfect vacuum in philosophy,—a perfect life in Herbert Spencer's science of biology,—are to-day only conceits of the philosopher and scientist; but they are living verities, nevertheless, and move and advance actual science and practical morals.

Granting then, with becoming frankness and humility, that a large space has, does, and in the future will continue to divide our real from our ideal, yet we may most positively assert that there is no "gulf fixed" between the two; that while we concede that this difference ought not to exist and that the principle of absolute certainty in results is alone right, we may proudly and honestly claim that our profession is ready to adopt any and all improvements, and has made, in our state, great advance toward the most desirable end.

No results of trials in court are right that are not absolutely right in all respects, and none are practically right that are not as nearly absolutely right in all respects as possible.

This is the good soil of discontent and conscious imperfection in which hope, aspiration and permanent progress take deep root and promise a continuous and beneficent harvest.

To throw the preponderance of our experience and conclusions into the march of progress toward the goal of greater, if not absolute, certainty in court is to do what Lord Bacon enjoins upon every lawyer, "To be a help and an ornament to our profession."

Yet honest men, lawyers, and judges there are who have great confidence in trial by jury, even in civil matters.

While we have great respect for the opinion of such men, there is another larger class for whose opinions we have not the same high respect; these must always follow the fashion, the style; their songs are learned from the early English authors, when the jury stood as a shield to the citizen against the king; the ignorant ear of the multitude is made to tingle with pleasure as the people's court is worshipped and that old Latin lie is hung before them, "*Vox populi, vox dei.*" Emerson has said, "When you find a man on a given side of a question, ask him why he is there." In applying this rule to judges you might possibly find (in other states) that political ambition would lead them to desire to pack the court-room with fourscore or more of jurymen that the flower of their greatness might not blush unseen, or the same opinion might arise from a natural timidity or reluctance to assume the responsibility of the question of fact and to cast the most difficult part of the labor of the trial upon the jury.

As the clergy are generally the rear guard in all ecclesiastical or even religious reforms, so the bench is the conservative element in legal reforms. The old rule, "*Stare decisis et non quieta movere*" forms their professional horizon and thus limits their vision to what is, rather than lifts it to the inquiry as to what is the best.

Be it so, there is great safety in the willingness to anchor in what is.

Certain lawyers, too, who are in love with the dulcet melody of their own voice in court and unwittingly believe everybody else is,—

O wad some power the giftie gie us,
To "hear" oursel's as others "hear" us—

or who have no regard for the quiet professional work at home, or who seem to forget that a lawsuit is only a business transaction having one simple end in view,—are usually great defenders of this mode of trial.

A well known and marked class of litigants, who play with oaths and courts as children play with toys, will always insist that their cases must be tried by jury. In their judgment, here is an unskilled and uncultured tribunal with whom fictitious facts, worked up for the day of trial,—facts which to an experienced eye clearly indicate their fraudulent paternity,—are equally convincing with the natural sequences of a straightforward business transaction. How often have we known such characters to win verdicts from juries which no experienced tribunal would have rendered.

While we do not contend that an experienced and skilled umpire would always be right, we do claim that such a court would be more likely to reach a certain and uniform conclusion—influenced only by proper motives—than a casual jury.

When rascals are so uniformly found worshipping at a given fetish, honest men ought to grow skittish and move rapidly on.

Our English ancestors had great reason to insist, even at the price of blood and revolution, and as a condition of civil peace, that their right of trial by jury, even in civil matters, should never be impaired; to them the right of trial by jury was a great victory, and it became the rock of their defense against extravagant kings, their retainers, and pliant and corrupt judges.

But our American ancestors and their sons have no such common enemy to their civil rights. Their jury trial can save them from no oppressor but themselves. So long as they, the people, make the laws, the judges, and the sheriffs, and suffer or enjoy the good results of those laws, their construction and their execution, there is no common danger to divert their attention from the adoption of such methods of trial as will work the most just results among themselves.

Conditions change and reasons out of which the old institutions spring disappear. The only hope of human progress is in our readiness to adopt such new institutions as are best suited to our changed conditions.

Having guarded ourselves against the opinion of others growing out of unsound motives, and having seen that the great danger which called this mode of trial into being does not exist with us, we are now ready to give attention to some of the particular advantages claimed for this method of settling questions of fact in civil matters. And first it is claimed—from their position in life—jurors are more likely to know the parties and their witnesses and are consequently better able to enter into their views and motives.

But with us, when judges and all fixed tribunals come from the body of the people and are familiar with the ordinary affairs of life, this ground of superiority cannot be claimed. But what becomes of this claim when the same authorities inform us that “The judge and jury must not decide facts of their personal knowledge; and should be in a state of legal ignorance of everything relating to the questions in dispute before them until established by legal evidence in court.”

And our own oath requires that the jury should try every issue “Agreeably to the evidence given in court.” Thus, knowledge of the case otherwise obtained is a legal disqualification.

Again, it is claimed that twelve men not known to be the jury until they are sworn, cannot be reached by corrupting persons and influences as easily as a fixed tribunal. Mr. Best triumphantly closes his argument in favor of trial by jury with these words: “The invincible objection to fixed tribunals exists in the difficulty, not to say impossibility, of keeping them pure.” Yet, to do him justice, his chief reason for this libel on modern courts is confined to political criminals, obnoxious to the crown; a state of things with which our civil trials have nothing to do.

With us, if this claim has any force at all, that force must be found in the fact that our judges, referees, masters, commissioners, or whatever the fixed tribunal may be, have itching palms, and are open to venal influences. As an indignant and crushing answer to this scandalous nonsense, I point to the silent grandeur of the judicial ermine, hanging to-day in spotless purity in the death-chamber of every Vermont judge, from a Chipman to the younger Redfield, or worn with the same sanctity by the living, from Chief-Justice Royce to Judge Munson ;—and all these have come from the bar of the state, out of which are usually taken other fixed tribunals for the trial of facts.

An independent judiciary, called to the bar of the legislature once in two years, must be always far above any such influences, and hence the claim is as futile as it is libelous.

Again, it is claimed that jurors are more likely to be independent, and less likely to be under the influence of powerful suitors.

But is this true? Coming as they do from the same communities as the suitors, is there not great danger that this indispensable condition of a fair trial will be wanting, in some degree at least, in spite of the most watchful eye of the adverse counsel? I believe the experience of the bar of Vermont will justify the statement that among the twelve laymen it is more probable that some will be found not thus free from evil influences.

The complications of modern social life are so past finding out ; relations — financial, social, political, and of kindred, breeding sometimes friendship and sometimes hostility— are so far reaching that it is almost impossible to find twelve laymen who will think and act independently. But once more it is said the jury protect the weak against the strong, the poor against the rich, the private citizen against the powerful corporations. Now, what is the element in the constitution

of every man, whether acting as a juryman or not, which gives rise to this claim? Clearly that disposition, always found in the human breast, to sympathize, and help the weak against the strong, and this too without regard to the merits of the controversy or the legal rights involved.

But modern civilization must bring into the active business currents of life strong men, rich men, and powerful corporations; all these exist, perform important functions, and are authorized so to do by the law of the state. Now, can it be said that our mode of trial has reached its perfection when we are compelled to admit that the jury will always lean toward the poor man, the weak woman, or a private citizen against a corporation, or for or against any other party? So long as the bar is constantly heard to say, "If we can only get this case to the jury we can surely win, proof or no proof," it cannot be said that twelve men are a safe factor in the administration of law and justice in civil affairs.

We are therefore compelled to admit that in our courts, as now organized, there is one agent at least—and that an omnipotent one in disputes of fact—not governed by the rules of simple legal right, but evolving results from motives outside of the proper scope of the trial, and which, therefore, leave every suitor a victim of chance freaks and passions.

Verily, this ought not to be. The work of our courts will never command full respect until this element of admitted weakness—yea, injustice and civil oppression—is removed. I am not finding fault because men are habitually led and governed by sympathies and tastes, preferences and prejudices, rather than firm principles and uniform results therefrom; this is just as the Lord has turned us out of hand. But I am at war with a system that puts these uncultured sympathies and tastes, preferences and prejudices to work injustice and to reach results outside of any legal motive.

So long as the tribunal is so constituted that reason may be displaced by prejudice ; that specious argument may be accepted as sound logic ; or appeals to passion be more effective than the plainest details of evidence, right, or reason ;— there is crying need of reform.

If we are to be true to our highest ideal of a tribunal to administer justice, we shall never put into it men who, with any suitors before them, must, by force of argument — or even fists — be fought into conviction, and who must, nevertheless, remain of the same opinion still.

Again, every cause in court has a predetermined and certain course to follow until it is submitted to the jury. No lawyer ought to be at a loss to follow his case up to that point. After consultation with his client, he carefully settles in his own mind the remedy ; then he sets himself to the task of making his declaration or plea ; then his witnesses are carefully examined and brought into court in such order as to show his case most lucidly ; then each side in argument adds another stroke to make everything orderly, plain and transparent ; then his honor on the bench runs the conflicting claims along side by side so clearly that every issue is perfectly plain and in order. But alas ! when the jury get by themselves, order is turned into chaos, pandemonium is broken up.

Double, double, toil and trouble ;
Fire burn and cauldron bubble ;—
By the prickling of my thumbs,
Something wicked this way comes.

Just what the result will be depends so largely upon the chances of this turmoil that the uncertainty has become the mother of more than one humiliating proverb. But, forsooth, unless the twelve intellectual gladiators agree upon some verdict, all the labor of the trial, and the expense of the parties,

and time of citizens, and funds of the state are thrown away. This so often happens — especially where a tribunal of experience would have any doubt of the facts — that the “law’s delays” were long ago reckoned among “the whips and scorns of time.”

A learned author, referring to the evils that would result from the action of a judge who should fail to render a speedy decision, says: “Thus keeping alive all the irritation and annoyance of a lawsuit; holding out to each of the parties a manifest temptation to fabricate evidence in order to turn the scale in his favor; and injuring the community by distracting the attention of at least two of its members from more useful occupations.” But delays originating in disagreement carry with them all these evils, with the addition of all the expense to the state and parties.

It is worthy of note in passing that this is an exceedingly expensive tribunal, whether we regard the time of all the jurymen taken from other employments all over the state, or the actual cash expenses paid by the state.

The practical method of selecting the names of the jury in the several towns is highly amusing, and has but little regard to the end in view, which would admit only the best qualified laymen in town; they must be taken from the several parts of the town; chosen too often because friendly to some member of the board of civil authority, or because they have actually requested to have their names put into the box; while there is always a class of hangers-on in every court-house, anxious to catch the eye of the sheriff looking for a talesman.

The evils of general incompetency have become so glaring, that for the trial of causes of such “importance, intricacy, and special circumstances that a fair and impartial trial could not

be held," the Legislature provided for a special jury, to consist of forty-eight judicious citizens whom the judges deemed to be "most indifferent between the parties and *the best qualified* to try the issue."

Out of the forty-eight the parties are to select twelve. Now, this is clearly a step in the direction of a removal of the chances of incapacity and the substitution of intelligence and independence if not experience in weighing evidence. Says Mr. Chipman: "The wise man, therefore, seldom and with caution leaves the path pointed out by experience. And experiments are generally made by visionaries and wild projectors, and of course usually fail. Hence a fixed habit is acquired adverse to all attempts at improvement."

Hence it is that improvements in legal practice seldom come with a flourish of trumpets; they are evolved out of the disasters of actual experience; they come silently, shade by shade, as the picture on the wall. The act of the Legislature mentioned before came in the same way, and we have recently adopted other improvements, all of which have come to stay, and all turn to a safer tribunal to settle questions of fact.

The most delicate and intricate part of the proceedings in any trial worthy of the name, falls to the function of the jury.

The judge can only wisely direct the trial, admitting or rejecting evidence according to well settled rules of law; but his own experience at the bar or on the bench, as he scans the witnesses or weighs their testimony, can be of no service to the jury.

"A lie," says an author, "is never half so dangerous as when woven up with some indisputable verity; and as truth is made the groundwork of the picture and fiction lends but light and shade, it often requires more patience and acuteness than most men possess or are willing to exercise, to distinguish fact from fancy and to repaint the narrative in its proper colors."

And yet this work of patience and acuteness is turned over to a body of men possessing neither ; men who have neither skill nor culture arising from long years of experience in observing the readiness of the witnesses ; the distinctness and certainty of their answers ; the agreement of all the circumstances of their stories with each other, or their tremulous hesitation, painful searching for details, and the successive connections of their story.

In the early days of the colonies of Massachusetts and Connecticut and of the New Hampshire Grants, the jury were empowered to decide all questions of law as well as facts, while for some time in the colony of Connecticut, from which the early settlers of our state largely came, the judges were not permitted to give their opinion to the jury in the first instance, even in matters of law, until the jury had returned a verdict,—the parties seeming to think that each had a right to the chance of a verdict in his favor.

During the first seven years of constitutional government in our own state, the people in their legislature passed laws vacating judgments, constituted themselves a court of chancery, and granted new trials in cases finally decided by the judiciary. The peculiar customs, and character, and spirit which have bequeathed to us the institution of calling together twelve laymen to settle questions of fact in civil matters, and even of law in criminal matters, are still well defined in the infancy of the jurisprudence of our state. But our people, while retaining the spirit and the character of the past, have moved far away from these twilight customs. And in closing, I may congratulate the bar of our state that the people themselves—the best citizens of the commonwealth—are seeking more and more other and safer tribunals to settle questions of fact, as they long ago did questions of law.

More than threescore and ten years have passed since a Vermont judge, comparing his present with his past, wrote as follows:—

Since that time, however, by an astonishing increase of manufactures and commerce, and a vast accumulation of wealth, the rights and relations of individuals have become more diversified and complex, and an independent judiciary, with a more enlightened, settled, and uniform administration of justice has been called for by all the intelligent part of the community.

This was a hopeful sign; and since that day this call has been constantly heeded, but never more than in this year of grace, when enterprise, having harnessed steam and electricity to its car, is racing neck and neck with science along the highway of progress to a grander and yet more complex civil life.

Able jurists outside our state and nation are looking toward the same reform.

The Attorney General of Manitoba announces that as a "Government measure he will, at the next session of the legislature, move the abolition of the jury system in civil cases in the province. The members of the bar are strongly in favor of this step, as many wrongs are perpetrated through sentimental verdicts by men who know nothing about the legal bearing of cases."

At the last meeting of the American Bar Association, at Chicago, Mr. Henry B. Brown of Michigan, in the course of an able paper on the subject of "Judicial Independence," made the following statement:—

One thing is quite apparent, and that is, that in a number of states the system of trial by jury as known to the common law, and as it exists to-day in England, in the federal courts, and in the more conservative states is gone. We are not, however, a worshiper of ancient idols, and we shall not regret its departure; provided, always, the substitute be equally good or better."

With us, the departure from this "ancient idol" has been very gradually and noiselessly made. A special jury, to which I have already alluded; the payment of the fees of referees, auditors, commissioners, and special masters by the state is working a silent revolution in the method of settling civil controversy among our people.

But we need a reform, not only in practice but in constitution, and this, if it ever comes, must come by perpetual agitation, started and maintained by the bar of our state. The Kingdom of Jurisprudence must move onward.

Look not to the far-off future;
Do the work which nearest lies;
Sow thou must before thou reapest;
Rest at last is labor's prize.

BIOGRAPHICAL SKETCH
OF
CHARLES H. HEATH.

READ BEFORE THE VERMONT BAR ASSOCIATION, OCT. 22, 1889.

By ASHTON R. WILLARD.

The news of Mr. Heath's death on the 22nd of July last came to me as it did to all his large circle of friends and acquaintances, with the sudden shock of something bordering on the impossible. A pleasant business relationship between us had terminated two years before with feelings of sincere appreciation on my part for the opportunity which had been afforded me of continuous professional fellowship with a man of such large ability, and on his part with good wishes for my future success; and at the moment of leaving him I should have said, to look at his robust and powerful physique, that he was destined to live on in the undiminished enjoyment of his unusual physical and mental vigor for many years to come.

The death of Mr. Heath, when I learned the circumstances of it, brought to my mind the death of Mr. James C. Barrett and the death of Mr. Phineas Chamberlin. To the minds of those who are familiar with the recently somewhat prominent Orange County case of Tillotson *vs.* Pritchard there is more than a coincidence of circumstance,—the circumstance of

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Photo. by J. H. Smith

Charles H. Heath

suddenness in the deaths of these three men. They were the three men who were prominently active in the conduct of that litigation. As such at any rate they constantly stand out in my mind. The death of the first two I can well imagine to have drawn from Mr. Heath the passing exclamation that some fatality seemed to be at work to exterminate the attorneys engaged in that case. As his own death, under circumstances if less distressing at least no less shocking in their suddenness, is added to the list, the simple coincidence the more compels itself upon the attention of those who think of the men in this connection. Out of four attorneys who participated in the argument of the case at the general term three years ago, only one is now living.

Mr. Heath was a person of very powerful physique and his physical constitution had given no signs of decay. Mrs. Almon Guernsey of Calais, his sister, tells me she can think of no other instance of an instantaneous death among their immediate relatives. Mr. Heath in his physical make-up took after the mother's side of the house. The mother was a Blanchard and belonged to a powerful and long-lived race. James Blanchard, an uncle of Mr. Heath, was six feet six inches tall and otherwise built in proportion. An aunt, Mrs. Peter Lyford, died not long ago in Woodbury at the age of eighty-nine. Another aunt, Mrs. Horace Beckley of Barre, is still living at the age of eighty-three, a large and powerfully built woman and worthy specimen of her race. With so much of the Blanchard strength and endurance in his physical constitution Mr. Heath may with good reason have expected, and his friends would have been ready at any time to have predicted for him, a lease of life extending into the next century.

At the time of his death he was in his sixtieth year. If he had lived until the fourth of November the even circle would have been just complete. If a retrospect is taken over these

sixty years they will be found to be filled with an immense amount of activity: activity first in preparation for his life work; activity afterward in his profession and the associated duties of the public-spirited citizen. The two periods,—the period of preparation, during which he was busy in educating himself generally and professionally, and the period of action, during which he was busy with the duties of the mature man,—divide his life about equally between them. In fact, the line of separation between these two periods strikes the middle of the years he lived with mathematical accuracy:—1829 was the year of his birth; 1859, the year when he opened his office; and—as we know—1889, the year of his death.

His birthplace was in the town of Woodbury. Many persons now living remember Woodbury as it was sixty years ago. It was no longer a pioneer country, though Elias Heath, the grandfather, must have found it so when he came up from New Hampshire and built his log house there in the first years of the century. Changes had taken place before 1829. The farm had been much developed. Before Elias Heath, Jr. and Ruth Blanchard, the parents of Charles H. Heath, began their married life on the home place, the log house had given place to a frame one. The farm was traversed by the stage route from Barton to Montpelier, and Mrs. Guernsey remembers as a child seeing the stage coaches pass twice a day with great pomp and circumstance. All that any town could be in those days was to be on a stage route, if water communications are excepted, so that Woodbury sixty years ago was by no means out of the world. Mr. Heath's coolness in situations of emergency is probably a family trait, for his sister once suffered a stage to pass over her without giving any signs of discomposure. She was sitting in the middle of the road before the house when the coach came along, and not discovered by the driver until too late to wholly draw up his horses. The leaders separated so as not to touch the child, the wheel horses

did the same, and the heavy vehicle passed entirely over her without injuring her, the driver being the only person frightened. There were four children in the household, three of them girls. The home was one of comfort and plenty. The farm was a farm of two hundred acres, and by the skillful management of Elias Heath was brought to the point of being the best in Woodbury. This property is still in the ownership of the family. Changes have taken place in the buildings, however, so that the house in which Charles H. Heath was born is no longer standing.

Mr. Heath was fond of alluding to three men of unusual ability whom this region (meaning the territory within a radius of twelve or fifteen miles about his own home) had produced. He mentioned them in his speech made last summer at the celebration of the centennial of the settlement of Calais. One of them was Nathaniel George Clark, D.D. of Boston, still living, who has been for many years Secretary of the Congregational Board of Missions, a man of culture and a fine speaker. Another was the late Constans L. Goodell of St. Louis, one of the foremost Congregational preachers of the West. The third was Thaddeus Stevens. Mr. Heath may have found much to stimulate him in Stevens's career. He would have learned with interest of his early efforts to secure a college education—the efforts which led him to the doors of the University of Vermont in 1810; of his striking out as a young man in the face of discouragements for a wider field of action; of his study of his profession while at the same time seeking to support himself as a school teacher; of his struggle to win for himself a leading place at the bar and the accomplishment of his purpose. As he grew up to know of the career of the great commoner, he would certainly have sympathized with him in the causes which he espoused—in the cause of education and in the cause of emancipation. I think he would gladly have taken a hand in the impeachment of Johnson. In some particulars Mr. Heath

was not unlike Stevens : in the perseverance which stopped at no obstacles ; in his determination to carry his points ; in his courage to meet any opponent. But, not to speak of other particulars, the divergence in temperament was wide. Any one would miss entirely the character of Mr. Heath who did not think of him as always jovial and fond of hearty fellowships. Mr. Stevens seems to have been of a serious and intense nature, with a disposition to be taciturn when there was no occasion to speak.

The education of the Heath children began at the district school. The school house was just across the road, on a site which is in part occupied by the present dwelling-house on the Heath farm. The distance of the school house is often a hardship to children who grow up in the country ; but in this case the very nearness of the school was converted, after the manner of childhood, into a grievance because they could not carry their dinners as other children did. I do not know just how old Mr. Heath was when he first became possessed of the idea of going to college. It was a very fondly cherished idea from the very first, but not encouraged by his father. There was opposition on no point that touched him as keenly as this. Mrs. Guernsey remembers the dejected manner in which he used to go about after one of the many conversations with his father on the subject of college. He used to tell his sisters that if his father refused his consent, his father should be obeyed as long as the parental right to control his doings continued, but that when he had attained his twenty-first year he was resolved to go to college. He must have learned in the course of time all that was to be acquired at the little school across the road, for when he was about fourteen he went over to Marshfield to what was called in those days a "select school," and after that to what I suppose was then the best school in the county—the Washington County Grammar School at Montpelier. It is probable that Mr. Heath as a boy

had been many times in the village of Montpelier before he came there to school ; but he had never lived there before, and his ways were the ways of boys who have grown up well toward manhood on the farm. In his case they were probably accentuated by that well known trait in his personal make-up—entire independence of judgment in making up his mind what he would and would not do, and indifference whether it was or was not what others would do under similar circumstances. The Washington County Grammer School at this time was under the principalship of Nathaniel George Clark, mentioned above. Dr. Clark recalls his pupil, and says : “In the fall of 1847, Mr. Heath entered the academy at Montpelier, then under my charge. He was a stalwart youth of seventeen perhaps, whose manner and bearing savored somewhat of the soil. The village boys were disposed at first to play practical jokes upon him, which it was soon found to be neither wise nor wholesome to repeat. A few weeks sufficed to secure him the good will and regard of his school fellows, and he was soon an acknowledged leader among them. Especially do I recall his military drill, to which he subjected them, where he was at once captain, adjutant, and major-general. As a scholar he did fairly well, and on occasion could apply himself with energy and success ; but hard study was not altogether to his liking. His genial manners and native courtesy, rather than his scholarship, made him a favorite in the school.” Dr. Clark, in what he says, alludes to the practical jokes of the village boys. Rev. C. W. Thompson of Westminster, Vermont, has mentioned the same thing. He says : “There was an occurrence at Washington County Grammer School at Montpelier when Heath was there that gave promise of the man. When he first came there, a green boy from Woodbury, he was run upon by some of the boys until his spirit was up and he won a big battle ; then he was let alone. I was there soon after and heard about it.” After his Montpelier school days, Mr. Heath was at the People’s Academy, Morrisville, and also pursued studies outside of school with a tutor.

The much cherished plan of entering college was carried out in the fall of 1850, when he was near his twenty-first birthday, though he did not become twenty-one until November of that year. The college chosen was the University of Vermont. During Mr. Heath's college course, the faculty of the University, though a small body, was composed of very able men. Dr. Worthington Smith was president; Professor Joseph Torrey had the chair of intellectual and moral philosophy; Farrand Benedict was professor of mathematics; Calvin Pease, afterward president, was professor of Latin and Greek. During Mr. Heath's first year, Professor Shedd had the chair of English literature and Professor N. G. Clark for the remaining years. Zadock Thompson was professor of natural history. Hardly any faculty could present a list of half a dozen abler men. Among his classmates were W. C. Watson, now an attorney practicing at Plattsburgh; Rev. C. W. Thompson of Westminster, Vermont; C. J. Alger of Burlington; Waldo Brigham of Hyde Park; Charles M. Gay of Boston, publisher of the *Living Age*; Colonel R. C. Benton, a Vermonter now resident in Minneapolis and prominent at the Minnesota bar; Fred H. Waterman of San Francisco; Dr. Simeon Gilbert of Chicago, editor of *The Advance*; and the late Dr. C. L. Goodell of St. Louis, already alluded to. Judge Powers, Mr. Fifield, and Professor Goodrich were in college at the same time but not in the same class. Mr. Watson, above referred to as a classmate, says that Mr. Heath was a valuable ally in the troubles which surround the novice in college. I give his words: "I recollect him well. He was a stalwart, manly fellow, good humored and witty, popular in the class, and abundantly able to take care of himself. He was a few years older than I was, and a large, powerful and courageous freshman whom no venturesome sophomore would assail on the football ground, in chapel, or elsewhere, with impunity. And much of our class immunity from sophomore hazing was due, in my judgment, to the intrepid manner of Heath and our deceased classmate Mr.

Glynn. In 1851, I remember well, in the chapel Mr. Heath producing in a spirit of jocose bravado an enormous wooden dagger, with an inscription in rhyme announcing that it was intended for the destruction of the first insolent sophomore that presented himself, and winding up with the words (which are the only ones that I now recall) "and Charles H. Heath defend!"

The rivalries between the college societies had much to do at this day with the friendships and hostilities between undergraduates. Mr. Thompson of Mr. Heath's class says: "In our day at Burlington party spirit between the secret societies ran pretty high and class feeling was at a low ebb." Colonel Benton has mentioned the part which Mr. Heath had in bringing his own society into a prominent place. "The two societies at the U.V. M.," he says, "had been the 'Owls' and the Sigma Phi's, both secret societies. A short time previous to Heath's coming to college, some one had started the Delta Psi in opposition to both the other societies; this an anti-secret society. It amounted to little until Charles Heath early in his college course appeared as a moving spirit in the Delta Psi. Under him the society grew until it included in its membership the majority of the college. Heath being a leader in the Delta Psi thus got ahead in college affairs." In Mr. Heath's activity in society matters in college may be seen the first outcropping of one of the conspicuous traits of the man — namely, his great interest in a common affair and his zeal in promoting it.

His classmates tell me that he did not shine particularly in the class room. Dr. Gilbert says: "He had excellent ability for scholarship but was without special ambition for class marks. He was a generous reader, and had a large fund of general information." Mr. Thompson considers that his ability to stand high was unquestioned, but says his ambition ran in other lines — in reading and debating. Regarding him in his

general aspect as a college man, the picture which Colonel Benton (who has not known him in later years) draws of him is interesting, because it would be accepted by so many as a true characterization of him in later life. He says: "I remember Mr. Heath in college as a driving, somewhat rough fellow and aggressive in all matters; a hard fighter, and one who had that peculiar faculty of attracting to his following a good number in whatever he undertook. To him everything was fair in war, and he did not spare his opponents until they had got through with him. However, though a bitter opponent he was not revengeful. The struggles over, he was friendly and cordial; and I do not believe Heath ever carried with him any resentment for the struggles he had with his opponents in college days."

- The question of ways and means was not one which Mr. Heath was absolved from the necessity of considering while at Burlington. He taught school winters while in college, as many young men did who were helping themselves along. Two winters he taught in Plainfield, once in East Montpelier, and once in Pepperell, Mass., a town near the New Hampshire line, where a place was secured for him by friends of his family resident there. The sceptre which Mr. Heath swayed as a teacher of district school may or may not have been a gentle one, but those who knew him will have no doubt that his rule was at least firm. In Pepperell, a combination was made by two schools—his own and another in the place—to resist him, but the combination ingloriously fell. Mr. Heath graduated from college in 1854 and received an A.M. three years later, in 1857. He always preserved an affection for the college and was ready at any time to take such steps as he could to promote its interests. A joint resolution which he introduced in the senate in 1870, and which is a curiosity as looking to the "protection" of the home college somewhat as if it were a home industry, at least indicates Mr. Heath's continuing interest in

the University and his desire to increase its usefulness. The resolution, which was duly passed, directed the committee on education in each house "to inquire and ascertain whether any "academy, grammar school or seminary, chartered by the state "and receiving funds from the public lands, lends its influence "to the upholding of, or sends its students to, the college or "colleges of other states; and also how many students from "Vermont are now pursuing their studies in the colleges of "other states; and to suggest any remedy thought expedient "in the premises." The committee were apparently unable to suggest any way of meeting the difficulty, as no legislation resulted.

After leaving college, Mr. Heath went back to the People's Academy, Morrisville, where he had made part of his preparation for college, and assumed the principalship of it. He kept this place until the summer of 1858 — that is to say, four years. His success with this school was remarkable. There were about fifty pupils in attendance at the beginning of his first term. During the next spring term the number increased to nearly two hundred, including recruits from the district school, which had been united with the academy. The *Vermont Gazetteer* states the number of pupils in attendance during Mr. Heath's second year to have been 383; and the number was maintained nearly at that point during the remaining two years. It is difficult to see when Mr. Heath could have found the opportunity for any very extended legal studies at Morrisville. Teaching school is said to be hard work, and to leave little inclination in the teacher for any other work between the close of school at night and the opening of it in the morning. The Saturdays, Mrs. Guernsey tells me, were busily occupied in surveying when the season of the year permitted his finding employment in that way. After some manner his law studies were led to completion before the close of the year 1858. So far as they were pursued in an office, they were pursued in the

office of Thomas Glead. Mr. Heath was admitted to the bar in Lamoille county in 1858, before Judge Aldis. This was an admission to the bar of the county court. His admission to the bar of the supreme court took place at Montpelier in August, 1863.

I do not know at just what time the problem where he should settle down and make his business home became determined in his mind. Either in college or before that time he had conceived the idea of going South. It may have been in college, for there were Southerners in his class, from whom he might have imbibed notions on the subject. The plan was reluctantly yielded as a concession to his father's wishes. Elias Heath said he had been assisting him all along in his struggles to develop himself, assisting him at the cost of some personal sacrifice, and he thought that now his son ought to remain near him. The project which had at one time definitely matured into a project to go to Virginia was abandoned. The debate first came up on this subject when Mr. Heath was fresh from college. He yielded at that time to his father's wishes and undertook the school at Morrisville. There was another debate and a similar and final concession when the question of a business location came up. The decision was that he should open an office at Plainfield. It was within ten miles of his birth-place and accessible to all the circle of his family acquaintance. He had taught there two winters while in college, taking an unruly school and giving satisfaction. It was also a point accessible for business purposes to all the northern part of the county and a good place to begin to build up a practice. He opened his office here on the 16th of January, 1859; in the following February was married to Sarah E. Putnam of Morrisville; and thus in his thirtieth year began his professional life.

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II.

It was while Mr. Heath was a resident of Plainfield that he was sent to the legislature; and it may be permissible to speak of this and of his services in other official stations before turning to that aspect of his career which is its principal aspect—his professional life. Mr. Heath went to the legislature as a senator. His term of service covered the last two annual sessions, those of 1868 and 1869, and the first annual session under the amended constitution, that of 1870.

Among the men with whom his first two terms in the senate brought him into association were Mr. Hard, Mr. J. P. Ladd, Governor Hendee, Mr. Barlow, Judge W. H. Walker, Governor Dale, Governor Farnham, Judge H. H. Wheeler, Mr. Dickerman, and Judge Royce,—all of them senators in either 1868 or 1869. His own colleagues from Washington county were, at the first session, J. H. Orcutt and Charles Dewey, the county being allowed three senators under the apportionment existing at that time. At the session of 1869, his colleagues were Mr. Dewey and Judge J. H. Hastings. General Thomas was in the senate in 1868 as lieutenant-governor, thereby earning one new title, being already Judge by virtue of a period of service as judge of probate in Orange county, and General by virtue of more recent services in another field. In the house in 1868 and 1869 were Judge Torrey E. Wales, Mr. Gleed, Lieutenant-Governor Hinckley, Mr. John B. Mead, Mr. A. M. Dickey, General Grout, Governor Proctor, Mr. Abell, Governor Converse, Mr. Carroll S. Page, and Colonel Joyce.

The session of 1868 was not prolific in legislation, and the acts of that year comprise no single measure which would now especially attract attention. Mr. Heath introduced three public bills, two of which passed. One of these dealt with the matter of election returns, and provided for sending duplicate certifi-

cates of votes for state officers and congressmen to the secretary of state by mail on the Monday following a freemen's meeting. The existing law placed the votes and certificates in the hands of the town representative, to be handed by him to the canvassing committee after the legislature had assembled. There was no provision for an immediate official return of the result. The provision as to duplicate returns is now preserved in sections 87, 88, and 92 of the Revised Laws. The other bill consisted of a brief provision that the certificate of the adjutant general or his assistant as to matters of fact deduced from the files and records in his office should be *prima-facie* evidence. Slightly varied in form, this is now to be found in the militia law (R. L. 3753), not in a good place, and liable to be swept away in some of the periodic revisions to which that chapter of the statutes is subject. At the session of 1869, more was done in the way of legislation whose effect is now felt than at the session of the previous year. Acts were passed permitting challenges in civil suits (R. L. 993); creating degrees in the crime of murder (R. L. 4086, 4087); and providing for a stenographic reporter in county court (R. L. 810). Although I have not the books by me to make a research, I have supposed these to be the first acts on these subjects. At this session were also passed acts providing that depositions might be used in a subsequent cause in certain cases (R. L. 1036), and that defendants might obtain the discharge of trustees by giving bonds (R. L. 1084, 1085). Mr. Heath introduced no bills of any consequence himself at this session, but his interest in the bills of others is shown by his frequent participation in debate. It curiously happens that the state library copy of the bills of 1869 is Mr. Heath's copy, containing notes made by his own hand. He gave it to the state library in 1887.

Mr. Heath's committee service in 1868 was with Mr. Hard, Governor Dale, Judge Wheeler, and Judge Walker on the judiciary committee, and with Mr. Hard and Mr. Clark of

Poultney on the committee on federal relations. In 1869 none of these gentlemen were left in the senate except Judge Wheeler and Mr. Clark. The judiciary committee was reconstituted at that session, with Mr. Heath as chairman. In his service on this committee he was associated with Mr. Dickerman, Judge Royce, Judge Wheeler, and Mr. Pingree of Weathersfield. Mr. Heath served also on the committee on rules with Governor Farnham and Governor Dale, and was a member of the committee called the committee under the fourth joint rule, whose nominal duty is to receive and report upon documents transmitted by the governor. Judge Royce was chairman of this committee. Colonel Joyce and Mr. Dickey were members of it from the house.

The session of 1870 was, in some respects, one of unusual importance, being the first after the amendment of the constitution. In the senate, none of the men with whom Mr. Heath had been associated in 1868 remained except George N. Dale, who had been elected lieutenant-governor with Governor Stewart. As Governor Dale was not a senator, Mr. Heath became the senior member of that body and received the honor of being elected president *pro tempore*. Mr. Abell and Mr. Grandey came to the senate that year from several years' consecutive service as representatives. Judge Ross sat as one of the senators from Caledonia. Mr. C. B. Eddy was in the senate from Windham county. Lieutenant-Governor Gardner, Judge H. A. White of Orange county, Lieutenant-Governor Colton, and Mr. G. G. Benedict were among the other men with whom Mr. Heath was associated who had not been in the senate during the previous sessions. Mr. Heath's colleagues from Washington county were Judge Hastings and Judge Heman Carpenter.

The session of 1870 was a period of readjustment, and a number of acts were passed adapting the statutes to the biennial plan. There was also an extensive recasting of

salaries. Among the important statutes of the session which had nothing to do with the change from annual to biennial elections, were the statutes removing the trial of divorce causes to the county court and making the parties witnesses; the long statute of miscellaneous provisions modifying the procedure in criminal cases by narrowing down the opportunities for technical objections; the statute relating to the testate and intestate disposition of the property of married women; the statute allowing towns to adopt the town system of schools; and a statute making a reapportionment of senators. Mr. Heath must have been active in debate upon all these measures, when not occupying the chair. Of the five public bills which he introduced only one passed—an act relating to frauds on gas companies, which is now section 4162 of the Revised Laws, and was probably introduced at some one's request. Of the measures which failed, one was an act relating to insurance companies, deemed too radical at that day. Some of its provisions have found their way into subsequent statutes, viz.: a provision that the right of a foreign company to do business in the state may be terminated if, on investigation, it appears that its affairs are not in a sound condition. Mr. Heath assumed the sponsorship at this session of the bill to raise the salaries of the judges, which then stood at \$2500. The bill was introduced by Mr. Heath with the sum left blank, and referred to a special committee consisting of Mr. Heath and two other gentlemen. It was reported back with \$2750 in the blank and with a provision that the chief judge should be allowed \$3000. The senate amended it, eighteen to eight, by making the amount an even \$3000 for all, Mr. Heath voting for the amendment. As amended the bill passed the senate, but it was killed in the house. The act which created the board of agriculture received its formal initiative from Mr. Heath at this session. He introduced a resolution directing the committee on agriculture to inquire into the expediency of establishing such a board; and the result was the introduction of the bill which became number 87 of the acts of 1870.

The regular committee work was done by other men at this session. Mr. Heath, being made president *pro tempore*, was released from service on the judiciary committee. He was assigned to the chairmanship of the committee on rules and committee under the fourth joint rule; but these committees are not expected to assume arduous functions.

The general characteristics which Mr. Heath developed as a legislator were these: abundant interest in all the measures of the session; great activity in debate upon almost every question of sufficient consequence to call for debate; and a very moderate tendency to originate or advance measures of his own. During his three terms he introduced nine public bills, a very modest allowance for such a period of service. Mr. J. P. Ladd, with whom Mr. Heath served in 1868 and 1869, recalls his appearance, conduct, and bearing at that time. Mr. Ladd tells me that he deemed him "one of the most intelligent, conscientious, and independent members." His words are further:—"He always meant to be right; and though he was somewhat diffident early in the first session (possibly occasioned by the fact that there was some hesitancy in his speech), yet he had the courage to enter into debate upon all questions of considerable importance and soon came to be one of the ablest debaters in the senate. He was never eloquent, but always candid, logical, and earnest. These three elements in his character gained him the confidence and esteem of the entire senate, as I then judged, and assured him the close attention of all who were present whenever he took part in discussion." Judge White of Washington recalls Mr. Heath's activeness in the senate of 1870. "He was interested," Judge White says, "in all questions pertaining to the welfare of the state, and was both a prompt and dignified presiding officer. He spoke upon all questions of interest which came before the senate and was an advocate of all educational reforms."

With the session of 1870, Mr. Heath's official connection with the work of law-making ended, and he did not thereafter serve the state in any office of what would be called a political character. What his political chances under any circumstances would have been or might have been I do not know. His idea was, that the governing of one's conduct so as to stand most favorably for selection for a political office was not consistent with the greatest professional efficiency. A remark which more than once passed his lips was, that attorneys diminished their effectiveness by their fear of creating personal antagonisms. Whether it is or is not true that if he had been less indifferent to creating such antagonisms his name would have been more often and by a larger concurrence voiced for a public place can only be matter for conjecture. Certainly his oppositions were unsparing, and no one would imagine at any time that any love for the adverse party or thought of what sort of an opinion he was creating for himself ever entered his mind.

Some of Mr. Heath's most valuable and most earnest work outside of his profession was done for schools. The interest in educational reforms which Judge White says he manifested in the legislature was not exhibited then for the first time or for the last. It was natural he should have such an interest, for he had been during a number of years a teacher himself and a successful teacher. I am unable to speak of his connection with the schools of Plainfield, except of his prominent instrumentality in securing the building of a new and better school in the place of the one in which he had taught. There was a party in favor of rebuilding and a party opposed to it. At a certain meeting a vote was obtained to rebuild by a small majority. Mr. Heath then gave a characteristic piece of advice. He advised that the old building should be immediately dismantled to prevent an effective reconsideration of the vote. His advice was followed, and the building was either completely torn down or carried well along toward it within twenty-four

hours. The new and better school house which was built in its place is at present the village school of Plainfield. Mr. Heath's official connection with the Montpelier public schools began in 1882. In that year he was elected chairman of the school committee and continued to hold the position up to the time of his death. It is a position which is not a sinecure, and no member of the committee was more faithful in service than Mr. Heath. It was natural that he should have a strong sympathy with the teachers. Once a disturbed parent came to the office to speak of a case of disciplining. He listened politely to the complaint and said what he could to calm the ruffled feelings, without committing himself. After the parent was gone, he remarked that "it probably would not have done the cub any harm if it had been laid on a little harder"; and at the committee meeting probably saw to it that the teacher's cause did not lack a vindicator.

Mr. Heath became a trustee of Goddard Seminary, now a thriving school at Barre, in the early days of the institution's history. Mr. Peirce, a fellow-member of the board of trustees, says of Mr. Heath's connection with the seminary: "His interest in the school was constant and unbroken, and was shown not only by his attendance at the stated meetings of the board but by many a good word and work. During all his connection with the school he acted as its legal adviser, and all as a labor of love. Not only his talent but his means went to aid the school, and many generous gifts came from his hand. At one critical period in the school's history he with others assumed a debt that sorely pressed the school, taking the school's note therefor. His share of the money advanced he subsequently gave to the institution when the indebtedness of the school was finally cancelled. His last connection with the school was to give a historical address before the students and teachers on the one hundredth anniversary of the inauguration of Washington. For an hour and a half he entertained his

audience with an address full of power and energy, which brought into play all his large store of historical lore; and for an hour afterward a large group clustered about him and listened as with anecdote and story he illustrated the contrast between the early days of Vermont and those of the present time."

What Mr. Peirce says of Mr. Heath's performance on this occasion would not surprise those who were aware how great a fondness he had for everything relating to the early history of the state. He was a member of the Vermont Historical Society and an interested member. One of the projects which he urged upon the society was the having of an annual field day, when the members should visit some locality of historical interest and commemorate their visit with addresses or other appropriate exercises. He himself would certainly have enjoyed such occasions and would have known how to make them interesting to others. A small appropriation was secured by him for the society while he was in the legislature in 1869, and at that session the act was passed which deals with the relations of the Historical Society to the state. His antiquarian interest came down to things as well as to events and persons. Old clocks and warming pans were coveted possessions. Dr. P. D. Bradford of Northfield, a friend of Mr. Heath and a sympathizer with him in this fondness for old things, brought one day to the office an instrument distantly resembling a wooden gridiron. No one of those present except Mr. Heath could tell what its purpose was. He recognized it as part of a hand loom, and became enthusiastic in describing how the warp threads were stretched through the narrow slits or openings between the bars and the instrument itself moved backward and forward to press together the threads inserted by the shuttle.

It seemed a tribute to Mr. Heath's general cultivation and to his helpfulness in any public matter in which his services were enlisted, that he should have been chosen in 1873 a

trustee of the state library. The chair given to him was the chair made vacant by the death of Mr. Charles Reed. The board fills vacancies in its own number, and the electors at that time were Governor Converse, Judge Pierpoint, Dr. George Nichols, Governor Horace Fairbanks, Judge Benjamin H. Steele, Mr. E. J. Phelps, Mr. E. P. Walton, and Mr. Joseph Poland. He held this office up to the time of his death.

III.

While Mr. Heath always distinguished himself by his activity and interest in whatever undertaking he was for the moment engaged,—whether in the work of legislation, or in promoting the business or educational interests of the community in which he lived, or of other circles with whose organization he was connected,—it was into his business as a lawyer that he poured the intensity of his life; it was before all as a lawyer that he lived; and it as a lawyer that he will be remembered. Mr. Heath's professional career was not long in comparison with that of such veterans of the bar as Mr. Roberts, Mr. Harman, and Mr. Wing, who were trying cases in the supreme court, as is shown by the pages of the Vermont Reports, twenty years before Mr. Heath was admitted to the bar. But to the younger men of the bar, thirty years of continuous work in the profession seems a long stretch; and a career so full of activity as Mr. Heath's one which may be pointed to as remarkable for its fullness of accomplishment. A review of his career seems to involve a glance at its beginnings, some statement of the extent of his clientage, and a survey in brief of his manner of conducting a case.

Mr. Heath's first case was the case known at the time as the case of the Jabez Town will. The Towns were the immediate neighbors of the Heaths in Woodbury. When Mr. Heath as a young man was at his father's house just before going to Plainfield, Hiram Putnam, the father of the grandchild of the testator, Jabez Town, who felt aggrieved because the child had not been treated upon an equality with its aunts and uncles, came to Elias Heath's house to see the newly fledged lawyer and to be foremost in securing his services in support of the effort to obtain a more equitable share for his daughter. Mr. Heath's sister, Mrs. Guernsey, remembers how Mr. Putnam came to the house, held out a bill to her brother, and told him to "take that, and not have anything to say to the people over there"—with a gesture which sufficiently indicated the Towns of the executor's party. One would think this rather a hopeless case for a young lawyer to enter upon, inasmuch as the mental capacity of the testator was not open to question or the sufficiency of the execution of the will. But because difficult, the victory which he was largely instrumental in securing was all the more valuable to him. The line of action had been already chosen by other counsel and a claim had been filed before the commissioners for services performed by the child's mother while resident in the household of her father, the testator. An appeal had been taken by Putnam from the commissioners' decision and entered in Washington county court, September term, 1858. The case did not come up for trial until a year from that time, but Mr. Heath's name had been promptly entered at the March term, 1859, and at the September term he took a prominent part in the trial of the case, assisting in the argument to the jury. The defence was that the relation between the testator and the child's mother was not that of master and servant but that of parent and child—a hard defence to make headway against; but the jury were won over. It must have been a moment of rare enjoyment for Mr. Heath when the verdict was announced;—a

verdict which, in the amount awarded for the mother's services, gave his client somewhat more than ten times the amount bequeathed by the will and brought the Putnam share of the estate up to the amount enjoyed by the other children of the testator. The case was taken by the estate to the supreme court on exceptions; but this only gave the Putnam party the opportunity to win another victory. It was argued at the August term, 1861, and the judgment was affirmed. In the report (35 Vt. 34) Mr. Heath's name is not down; but Mr. Shurtleff, who remembers the case, is of the impression that, despite the silence of the report, it was in fact argued by Mr. Heath. From what is known of Mr. Heath's persistence in keeping his hands on a case once his, this seems more than probable.

His clientage was a plant of rapid growth. Putnam *vs.* Town was not the only case in which his appearance was entered at the March term, 1859. An inspection of the docket of that term discloses his name in eight other cases—a surprising array for a young man who had not been a member of the bar four months. A year from that date he appears entered in nineteen cases, and at the next term thereafter the number increases to thirty. I am unable to state at what time Mr. Heath first reached the point of being concerned in more Washington county cases than any other member of that bar. Business poured in upon him until his hands were more than full. An inspection of the Washington county law docket for his last term shows that, having regard to a simple count of the cases, his retainers were about twenty-five per cent more numerous than those of his next competitor. Comparing the number of his cases in one year with the number in another year, there have been times during the period when business was better in Washington county when he has been concerned in more cases than at the time of his death; but I am not aware there is any room for saying that in the last ten years

there has been any diminution of his personal prestige. In stating the extent of his practice it should be added that there were always some cases on his list which might better have not been there—cases brought to him by that kind of following which it is no pleasure, no honor, and no profit to serve. But he had also more than his share of important cases, and among his clients there were scores of men for whose business any member of the bar would have been willing to compete. The character of his cases as a whole was what would be expected of an attorney with a large general county practice. They were as diverse in character as the wares in a country store. Corporation cases, in the sense in which the phrase is commonly used, were not wholly absent from the list, though he did little business of this sort, saying sometimes himself that he did not think he was cut out for a corporation lawyer. In town cases he figured very often, and his advice was frequently sought by selectmen. In litigious cases of every description,—cases in which much feeling was involved,—his services were sure to be in demand. Broadly it is to be said that cases in law and equity, cases civil and criminal, proceedings in probate and insolvency, will-making, deed-making, and every description of office business, all in turn,—or rather, all at once,—demanded and received his attention.

One may find at the same time a cause and an effect of his extensive clientage in his wide acquaintance. His mind was retentive of names and faces, and his good fellowship and genial manners made approach easy. At the beginning he commenced his practice with a considerable acquaintance, made up in part of people with whom his term of service as teacher had brought him in contact and in part of those whom he had come to know because he had grown up in the neighborhood. Every case that he tried widened his acquaintance, until in the later years of his practice there seemed to be hardly a man, woman or child in the upper half of Washington county

whom he did not know or know something about. If, in conversation with him, the name of any person belonging within this territory was mentioned which struck him unfamiliarly, it was generally necessary to stop and locate the individual before proceeding. During the last years of his practice it was not customary for him to come very early in the morning to his office, and a number of the men or women who came to him for advice and assistance not unfrequently arrived there before him. I think he rather enjoyed coming down, as he often did, at eleven o'clock, and finding his office full of men awaiting him, like the knot of men who await the levee of some official dignitary. Disposing of the business of such a group was what he called "clearing off a flooring." Sometimes the flooring was not "cleared off" until four o'clock in the afternoon, as it was Mr. Heath's custom whenever a new case was brought into the office to have a minute statement of all the circumstances taken down at long-hand with as much fullness of detail as the client would give. The patience that has been displayed in the outer office while waiting hours for a turn to enter the consultation room does credit to the people who composed his clientage and indicates what they were willing to put up with for the sake of a few words with Mr. Heath.

His Orange county clientage deserves special mention. Mr. Heath's practice in that county does not date back to the beginning of his practice in Washington county. He continuously had at least one case at that bar from 1861 until 1868, but I do not find any definite indication that he tried any case there by jury, so as to show what material he was made of, until the latter year. In 1868, it appears from his dockets that he was called in to assist in the trial of a jury case, and this seems to be a point of departure from which may be reckoned an increase, both of his new entries and of his retainers in old cases. In December, 1868, he had three new cases; in June, 1869, five new cases; more additions at the

two terms in 1870; and thereafter an average of between seven and eight new cases a term. I may say that by 1880 Mr. Heath's Orange county practice had come to rival his Washington county practice in the cares which it imposed upon him during term time. During the time that I best knew of it, the terms in Orange meant fully as continuous and exacting work for Mr. Heath as the terms in Washington. If a comparison be made between the two counties it will be seen that the total amount of law business as indicated by the total number of entries on the county court docket is nearly a third larger in Washington than in Orange, and Washington county is, so far as a correct inference may be based upon the grand list returns, a third richer and—by the last census—somewhat more populous. But in the actual amount of jury business transacted Orange presses very closely upon Washington. I base my judgment here upon the auditor's returns of petit jury debentures. There have been three years since 1880 when the jury has been longer in attendance upon the two terms of the county court in Orange than in Washington; and if the comparison be made to cover the whole period from 1880 to date, it will appear that the average length of the attendance of the petit jury per term is (in Orange) nearly nine tenths of the length of attendance in Washington. Mr. Heath participated in a large share of the jury business, trying once, at least, every case during a term of four weeks without break, if my memory serves me correctly as to a statement made by himself. The Orange county cases which came to Mr. Heath's hands were not only numerous—they were important as well. Among the cases pending in the office during my connection with it,—one of the principal ones, having regard to the amount of money involved,—was an Orange county case. Mr. Heath's cases on the civil docket of the United States court were cases removed from Orange county in which he had been retained while they were pending there in the county court.

His Orange county practice was very grateful to Mr. Heath. It was away from his own home, outside of the circle of his own acquaintance, and thus built up solely upon the basis of his own demonstrated capacity to conduct business satisfactorily. Furthermore, he was the only member of the Washington county bar resident in Montpelier who enjoyed such an extensive following in a county of which he was not a resident. In his treatment of Orange county clients I thought I detected a degree more of courtesy than he accorded to those who constituted his following by a better right, though he was always courteous to his clients. And with the members of the Orange county bar his relations were particularly pleasant and agreeable. At the beginning of his practice in that county, Mr. Heath assumed relations with a bar which numbered then among its members Judge Hebard, Judge Underwood, Governor Martin, Mr. Rogers, and Judge Perrin. I think the members of that bar to-day would be surprised to know the changes which took place during the years of Mr. Heath's active connection with it—that is, from 1870 to 1889. Out of twenty-six names which the clerk printed in his bar list in the dockets of 1870 only nine are printed in the docket of to-day, and only five of these are names of men still in active practice. The nine are Judge Rowell, Judge Gleason, Mr. Leslie, Mr. Clark, Judge White, Mr. Dickey, Governor Farnham, Mr. Harvey, and Mr. Boyden. It seemed perceptible at times that Mr. Heath took more especial care to be fair in his opposition at Chelsea than at Montpelier. As he counted among the members of the Orange county bar the warmest and closest professional friends that he had, it is not unnatural that in his manner toward them as antagonists he should have taken unusual pains to be fair and courteous.

The term at Chelsea with its incidents must be more like the old-time sessions of court than anything else now existing in Vermont. Chelsea not being on any railroad, the journey

to the county seat is still made by the attorneys in their own private conveyances. With Mr. Heath, the beginning of the June or December term meant the "hitching up" of his small sorrel mare Topsy (which he thought very much of and others very little of) in his top-buggy or sleigh, as the case might be; the loading up of the body of the vehicle with books, travelling bags of clothing, and a large valise of papers, which usurped the room intended for one's legs; and the starting off on a long drive of twenty two miles through Barre and over the Washington or Williamstown hills to the distant shire. The time of starting might be at any time of the day or night. Upon my first journey with him we set out at seven P. M. on wheels, in the blackness of a December night, through wet, falling snow, with a lantern tied to the dasher. The journey was always made by Mr. Heath in the same way, whatever might be the condition of the roads. On one occasion, going to the supreme court in March, the mud was so deep and the little mare had so much work pulling the heavily loaded vehicle that there was no alternative but for us to get out and walk. And this we did at the beginning of the long ascent of the hills in Williamstown, plodding through the mud until the summit of the divide was reached, when, with the help of the descending grade, it was possible for Topsy to get on. On another occasion Mr. Heath set out alone in a snow storm, and pushed his way along until he had to call for help from a farm house to get himself and his horse out of the deepening snow into a place of shelter. On still another occasion he drove off an embankment near Williamstown in the dark, overturning the buggy and throwing himself and his companion out. Cold was a less serious obstacle than bad roads, and the journey was more than once made when the mercury was in the region of the thirties "below". On arriving at Chelsea the objective point was the Orange County Hotel, which, at the beginning of a term, comes into one of its periods of intermittent life and fills up with judges, lawyers, jurors, and people of the

court. It is, in fact, wholly given up to them. The legal atmosphere is as dense there as at the court room. The hotel delivers up its contents to the court room in the morning, receives it again at noon, and takes it back at night. Some traditional etiquette is observed in the treatment of the legal body by the hotel management. The judges, lawyers, and officers of the court are served in a dining-room by themselves, jurors, witnesses, and others taking their meals in different rooms. The presiding judge occupies a seat always at the head of one particular table. The assistant judges sit next him and beside them the sheriff and reporter. The presiding judge is also assigned the parlor of the hotel and room connecting with it. Many of the attorneys who go there statedly, as Mr. Heath did, have occupied the same rooms year after year. Mr. Heath's room was his home for the term. Whether continuously engaged in cases or not, he remained at Chelsea, advising with clients in the interval of more active employment in the court room or preparing the cases that were to come on. Sundays were spent at Montpelier if possible, but he was rarely absent from Chelsea during a day that the court was in session.

I hesitate to undertake characterizing in general terms his manner of conducting a case, when he has just passed out of sight and the whole performance with all its fullness of detail stands in the minds of so many of his associates with the distinctness of a present impression. Yet in view of preserving some memorial of him in this aspect, it may be pardonable to speak of him in this imperfect way. In thinking of Mr. Heath's manner in the trial of cases, it is as an attorney in jury cases that he more naturally presents himself to one's thoughts. Mr. Heath felt that his forte was the jury. He has the reputation of having tried more jury cases in the last thirty years than any other member of the Washington county bar. It is not difficult to believe this when the dimensions of his practice in Washington county is taken into account, and when

it is remembered that his participation in business has been for many years almost as large at Chelsea as at Montpelier. He did not hesitate to say that he had more confidence in the jury than in the court; could better predict what they would do. Probably he was entitled to say that he knew the jury. His thorough knowledge of "folks" must have given him as much of an insight into the mysterious springs of action upon which the men in the jury box move as any one could hope to acquire, and his long practice had given him every opportunity for experimental knowledge which an attorney could possibly have.

Although he was generally in the court house while court was in session, he was not fond of waiting idly in the court room itself while waiting for his cases to come on, preferring to remain in some of the anterooms. Upon the calling of his case it was his custom to enter the court room with an active step, his bundle of papers in his hand, make his way to the proper table, call in his client from outside the bar, and give attention to the drawing of the jury. In an important case the probable coloring of opinion of each jurymen was made a matter of careful study beforehand. I do not know that this is unusual, but I have seen Mr. Heath in such cases far outstrip the zeal of the client himself in his efforts to find out the temperament and bent of mind of each juror liable to be called on the panel. His preliminary statement of the case to the jury was made in a few words and in a conversational manner. When we reach the putting-in of the evidence, however, we reach a point where Mr. Heath's individual characteristics at once became apparent and where they were exhibited in a manner which was not always pleasing to the opposition. The general impression among those who tried cases much against him was, that he needed to be sharply watched.

The art of examination and cross-examination is an art about which books have been written and hundreds of lectures have been delivered; and if an award for the place of greatest

consequence were to be made between the art of examining and the art of arguing, in the opinion of many attorneys the place of greatest importance would be given to the former. Mr. Heath always seemed to me to have very unusual ability as an examiner. His examinations and cross-examinations for the last ten years are all on record, and his fame — so far as he is entitled to fame on this ground — is laid upon a basis which can be inquired into at any time and his exact right to the reputation which he enjoyed laid bare. Of any attorney's performance in direct examination, unless he is handling an adverse witness, there is little to be said. Mr. Heath generally came as near losing his temper as he ever did when he had an adverse witness to handle and the adverseness of the witness, or his reluctance to say what he ought to say first, became apparent on the stand. In cross-examination, four points occur to me as principally characteristic of Mr. Heath's manner: First, It was his policy always to cross-examine; that is to say, he never would let a witness go without asking him some question. He would perhaps have feared to create an impression that he was afraid of the witness if he asked him nothing; or he would have disliked to lose the possible chance of leading the witness to make a display of temper, or otherwise to exhibit himself personally in some unfavorable light. Second, He was persistent. His associates will think it a mild statement if thus put without superlatives or intensive expressions. He cross-examined for an hour where other attorneys would have been through in twenty minutes. In a will case in county court at Chelsea he cross-examined the witness, Nathan B. Cobb, for a day, where other attorneys would have been through in an hour and a half. His sister, Mrs. Guernsey, says that persistent questioning was a trait of him as a child, and she adds that it was impossible to keep anything from him. If she came into the house with her dress torn, a hundred questions must be asked until he knew just where she did it, and how she did it, and everything connected with the trifling accident. It was the same with

witnesses on the stand. He pursued them to all lengths. Through it all he was alive and energetic himself, animated with a conscious purpose, and almost always able, if called upon, to point out some unimagined connection between the question asked and the issue. Third, He never hesitated to handle matters entirely without gloves if the situation demanded it. I do not think that he unnecessarily shocked the sensitiveness of sensitive persons whose feelings he considered entitled to respect. But mock-sensitiveness was not spared; and if his witnesses were rough men and women, there was no tenderfootedness displayed, no suspicion of hesitation or of drawing back. Whatever was material to the case, however ghastly or however malodorous, was fastened upon with an iron grip and unceremoniously dragged into the light. Fourth, He thoroughly mastered any feature of his case which required expert or unusual knowledge and met the opposing witnesses almost on their own ground. Personally I have thought that his most conspicuous ability in cross-examination came to the surface in examining a witness who had or purported to have professional or expert knowledge. He went behind the statement of inferences to the data on which they were based, and saw to it that every undue conclusion which the jury might have drawn should be corrected and that every circumstance which told in his own favor should be affirmatively stated. In a recent case where a physician was sued by his patient for alleged malpractice, Mr. Heath's examination of the medical witnesses was deemed so skillful as to call for complimentary remark from the presiding judge after the term was over.

Certain traits will be remembered which characterized Mr. Heath's whole conduct of a case,—namely, his policy of always presenting a bold front; his habit of treating the case of the other side as a humbug or a conspiracy; his confidence when the cause seemed to others desperate; and his impromptu readiness to meet objections. He did not believe in showing

weakness, and once made to me some severe criticisms upon the manner of an attorney who assisted the state's attorney in certain prosecutions, and who prefaced his argument to the jury with protestations that he "regretted the unpleasant duty," etc. Mr. Heath's idea was, that the attorney ought to have paced up and down before the jury box in righteous wrath, talked about the horror of crime, and aroused in the jury the same feelings which prompt the enactment of criminal statutes. His habit, in civil cases, of treating the opposition as a humbug, dates, I think, from the beginning of his practice. To it must probably be charged some of the personal animosities which he created. People who were accustomed to look at things seriously,—who had everything at stake in a single suit, who were firmly convinced of the justice of their cause, and knew that Mr. Heath was aware of this,—could never forgive him for refusing to avowedly recognize them as proceeding in good faith. I alluded to his confidence in a desperate cause. How far it was a personal illusion, and how far it was assumed for the sake of inspiring those with whom he was associated, I could not in any given case certainly tell. But to all appearances his own spirits seemed to rise in the face of the blackest prospects. We were listening once to the evidence as it was being given in a criminal case tried at Burlington—one of Mr. Heath's own cases. It became sufficiently clear to me as the witnesses for the prosecution successively delivered their testimony that the respondent was destined to lose his case, as it was not to be expected that such proof would leave a doubt in the mind of any dispassionate listener. In the face of it Mr. Heath's spirits seemed constantly to rise. He was deaf and blind to anything which told against his client. So far as was to be conjectured from his manner, he never weakened for a moment in his own mind from the professional attitude that the statements of the opposing witnesses were either false or consistent with his client's innocence, and up to the moment of the verdict itself protested that there would be either an

acquittal or a disagreement. One would need to have been present and to have heard the testimony to perceive fully the force of this illustration. His impromptu readiness to reply to objections seemed remarkable to young men. Often it was due to the fact that "he had been there before," as it is often in the case of men who answer quickly; but it was also a trait of his nature to depend little upon deliberation, and to be as ready to make such response as he had to make after one minute as after ten.

When we come to Mr. Heath's manner in argument, we come to something which tradition alone will preserve. It seems a pity, in view of the desire which we so often have to re-create a prominent legal character, that legal oratory should be so fugitive. What the witnesses say, what questions are asked and what answers are given, all go down in black and white; but the words of the advocate—winged words, if we may use the Homeric epithet—fly away with the breath that utters them and are lost. Mr. Heath's arguments, with the exception of one or two, have shared the common lot of legal arguments. *State vs. Sloan*, an Orange county murder case which Mr. Heath defended, was, in its progress, reported at considerable length in the *Boston Herald*, including the arguments. Fragments of other arguments in criminal cases of magnitude are preserved in the newspapers of the day. In an Orange county civil case, which occupied something over a week in trying, and in which he was deeply interested and sure to make one of his best arguments, all his words were taken down as rapidly as they could be followed at long-hand by one of the other attorneys. I imagine this to be the most complete record of any of his county court arguments in civil cases. Since his death I have reread the manuscript with new appreciation of his unusual understanding of the men whom he addressed and of the methods appropriate to reach them.

No stenographic report of Mr. Heath's words, even if we had it, would reproduce his personal appearance before the jury. Any one who would undertake to re-create the likeness of him as he then appeared, must imagine a man weighing between two hundred and forty and two hundred and fifty pounds, somewhat over six feet tall and of generous girth. A fine likeness of his face is fortunately preserved. During the trial of *State vs. Sloan*, above alluded to, in June, 1886, all the officers of the court and the attorneys engaged in the case were photographed, and the photograph of Mr. Heath has since been engraved with unusual success by H. B. Hall's Sons of New York. In the photograph and in the engraving we may see a round, determined face, smooth shaven except the upper lip, the moustache and hair somewhat gray, and the head powerfully set upon the shoulders. Resolution is written in every line, unless I should except the lines from the corner of the eyes, which betray his constitutional willingness to laugh. In his dress he was always neat in the court room, but thoughts of fashion were something that never entered his mind. On one occasion, in the office, a student who went to answer a telephone call said that some advice was wanted about a suit. Mr. Heath went to the telephone, but on discovering that it was a suit of clothes at "Woolson's" turned away, saying that if it was that kind of a suit the person wanted must be the junior partner and not himself. Whenever I give a thought to Mr. Heath's personal appearance, he comes to my mind always in one of two short coats: one of these a short sack coat, like a boy's, the other of a pattern not exactly like anything else which was then worn and not at all what a tailor would probably have pronounced adapted to a man of his build. A red sash was once added to other peculiarities of the attire, in which he appeared in the outside business of a road case.

If occasionally tiresome in long cross-examinations, Mr. Heath was almost never tiresome in argument. Whether the

facts which he had to deal with were such as to enable him to be convincing or not, he was at least entertaining. He rarely made elaborate notes for argument. In a case which did not make any particular demand on his mental powers he made no notes at all, but preferred to whittle sticks into long, tapering pointers while the other side were arguing, or even while the evidence was being put in, regardless of the litter made on the floor of the bar. I do not know that he ever under any circumstances made any written preparation for his advancing argument, though he did, in important cases, make notes of points to be replied to. The points and evidence on his own side seemed naturally to gravitate into the proper position, without attempt at artificial arrangement. It was interesting to me to note his method in argument, which seemed to be systematically this: First, to entertain the jury with some preliminary statements of general principles; that is to say, to advance some large generalizations intended to indicate that the only salutary disposition of the case,—the only disposition to be reconciled with the closest regard for public policy,—was a verdict for his client. If it was a case of murder and he was for the state, then “murder was a terrible thing; the public must be protected or the foundations of society would be shaken,” etc. If he was for the respondent, then “the death penalty was shocking and repulsive; it was better that ninety-nine guilty men should go unpunished than that one innocent man should be hung,” etc. It was not his manner to plunge *in medias res* at the beginning. After his introduction the points made by the other side were taken up, discussed, and disposed of as best they might be; generally in adverse climax—weakest last. Then came his own advancing argument; the same which he would have made if he had opened the case. Finally he added a few general remarks, disconnected with the thread of what he had been saying, by way of bringing his effort to a formal close. They rarely bore signs of premeditation, and were more apt to be abrupt than unduly prolonged.

Mr. Heath had a good voice for speaking and used it well. I never noticed any hesitancy in his speech. If he had any difficulty in expressing himself early in life it must have entirely given away under repeated efforts to improve his manner. His mode of expression was not wholly the conventional one. The vocabulary which he used in addressing the jury was not the ordinary vocabulary which is heard in the supreme court. He preferred to be more colloquial. It was more natural for him to say, "There isn't a mite of proof," than "There is not a scintilla of evidence." His determination to find a joke was occasionally pressed to such a point as to seem a defect to the bar, but his humor was generally acceptable to the jury. It was not a Heath argument unless the jury laughed once, and generally they laughed many times. He was abundant in gesture; and his friends will remember his habit of pulling up his sleeves at the commencement or in the middle of an argument, as if he were preparing to attack some enemy at close quarters. The picturesqueness of his argument was increased when he had something to flourish in his hands. Among the "properties" in the office which had at one time or another served him for this purpose were, a dagger which had figured in a civil case in which one Elijah Whitney was defendant, and Dudley's whip, a relic of the famous Washington county case of *Stevens vs. Dudley*. At a late session on a winter day in the county court at Chelsea he held a lamp in one hand for a period of twenty minutes while addressing the jury, making use of it to decipher a letter which he was reading, but, in the intervals of reading, gesticulating as usual. It would not be doing him justice to omit to say, while speaking of these phases of his argument, that he was also effective. His points lost none of their force by being put in unconventional language, and he did not fail to be persuasive because he was also entertaining.

Mr. Heath has doubtless laid the foundation for a long fame in the counties in which he practiced. Anecdotes of his

acts of audacity and of ends surprisingly accomplished in the face of obstacles will be narrated of him for many years. A reputation such as his has much more of the power of vitality in it, the vitality which lives by tradition, than the reputation of one whose work is done in the seclusion of the supreme court. The supreme court is not a forum in which to win popular laurels. Disputes on points of law are something which the rank and file of laymen do not understand. The demurrer is as impenetrable a mystery to them as the mystery of transubstantiation. I recall a case of Mr. Heath's where upon conference between us he consented to the filing of a demurrer, though he would not himself have chosen that course. The demurrer was successful in the supreme court, and was disposed of at a term held within two months after the term of county court at which the case was entered. It was the end of the case and of the controversy, because the adversary could not amend to any purpose without departing from the facts. Mr. Heath's client got his bill of costs, and what might have been a protracted litigation was settled without trouble and without expense. But the client never could be made to fully understand how his case had been disposed of and never was fully satisfied with the result. He had imagined a battle where there would be much blowing of trumpets and clashing of swords. I believe he would have come off vanquished from such a conflict, fought pluckily and persistently before his friends and neighbors, with more satisfaction of mind than, as he did, victor in a tame debate in an empty court room. Mr. Heath's professional work was done in the eyes of everybody. He was constantly to be seen before the jury and in crowded court rooms. His professional activity was in lines which everyone could understand and his efficiency was of a nature which everyone could appreciate. The reputation of such a man is preserved in unexpected places and lasts long before it is wholly effaced. While gaining a strong hold upon the popular mind, Mr. Heath also secured the

friendly regard and esteem of the members of the bar of the state. His election to the position of president of the State Bar Association at the annual meeting in 1886 is a sufficient indication of this.

In connection with what is said of him as a lawyer, a few words may be added as to his students and business associates. He drew many students to himself. Some of these are now practicing in Vermont, and many have left the state, after admission to the bar, to practice in other parts of the country. In later years he has had continuously two or three students about him.

Mr. Heath's first associate in business was Judge Carleton. Judge Carleton was in the legislature with Mr. Heath, representing Waitsfield, where he then resided. A cordial and friendly relationship sprang up between them there. Upon his removal from Waitsfield to Montpelier a partnership was formed between them, which continued until 1883, when he became Judge of Probate. Mr. Heath's associate at the time of his death was Mr. Alland G. Fay, who formed a partnership with him in 1887. My own relations with Mr. Heath was in the interval between these two partnerships. His relations with his partners were uniformly pleasant. In the office Mr. Heath was always conciliating, ready to listen to and accept the views of others, and never failing in personal courtesy.

IV.

Some of Mr. Heath's personal traits of character, which can only be mentioned in a miscellaneous way, deserve to be spoken of. He had many amusing traits. Among these was his fondness for restoring to usefulness an old thing which had been cast aside. One day, in moving a bookcase in the office which had not been disturbed from its position for many years, a part of an old ink bottle came to light. It was the circular wooden frame, if I may so call it, in which a glass ink receiver had once been contained. Mr. Heath took the remnant up tenderly. It interested him. He shook out the broken bits of glass which remained and meditated how to replace the ink receiver. There were clients in the office at the time waiting to have business done, but in the face of something really important their passing interests could be postponed. Mr. Heath looked carefully through all the drawers of old remnants in the office but found nothing to meet his need. He then took the piece of wood, went out upon the street, and made a round of the drug stores to find a small phial which would fit into the empty socket. One was found and brought back. The people in the office were glad that their matters promised to receive attention. But the work after all was not complete. The glass did not seem to rest securely in its bed. Once more Mr. Heath set out on a journey about the town, and went somewhere to a paint-shop—I think on Elm Street—where he got a lump of putty. He brought this back with him to the office, fastened the phial firmly in its place, filled in all the chinks, smoothed down the surface, and surveyed his work with great satisfaction. Having brought matters to this point he was ready to resume his regular occupations.

His fondness for repairing ink bottles is not to be taken as an indication of fondness for writing. Whether it was so always with him I could not state, but in his later years work

done with pen, ink and paper was work for him in its most serious form. Although frequently in demand as a public speaker,—and sometimes under circumstances where some written preparation in advance would have been desirable, even in his own estimation,—the day generally came without anything having been written down, even an outline or notes of points. His address to the Bar Association upon the anniversary of his election as president is the only written address of his in recent years of which I have any knowledge. During one period his occasional writing was done with a large black and white quill some twelve to fourteen inches long. I think it was a feather from a turkey's wing. It was, or came to be after a little using, a very poor pen, and seemed to please him correspondingly. This he would dip in a large freestone inkstand which stood upon the table in the middle of the office and proceed to trace the characters of his handwriting on whatever paper came first to hand. Whether it was a letter or a legal document he was writing, the paper was all equally good for his purpose. In one instance he began a petition in a county court case upon an oblong piece of reddish writing paper, remnant of a supply inherited from a printer formerly tenant of an adjoining office, and after getting what he could on that gummed on an annex of white paper, on which the citation was written,—all in his own hand. The paper was a petition in a divorce case, and, if I mistake not, is now in the files of Washington county court. Of his handwriting he had peculiar ideas, as he did of his mare, Topsy. He considered it legible and well formed, and occasionally even elegant when he took pains with it. His clients who had to read his letters were, however, much relieved when he set up a type-writer.

Mr. Heath has left in many quarters the impression that he was a rough and aggressive man without fine traits. His manner as an antagonist was often calculated to leave this impression, and it is not to be wondered that those who have

known him only as antagonists should sometimes entertain this idea of his nature. But it is true that he could also be most conciliating and courteous. The ways of refinement were at his command as well as the ways of coarseness. People who have constantly been associated with him in relations which excluded antagonisms, or who have met him and known him entirely outside of business affairs, preserve an impression of him which is quite distant from the impression of those who have met him only on the field of battle. It was his belief, that in his business, or in certain lines of his business, what the situation demanded was roughness rather than the manners of the drawing room; and he was certainly entitled to draw this inference in some cases from a comparison of the results of applying the harsh and the soft manner. It is related on good authority of Pope Pius the Ninth when he was bishop of a small Italian see, away from Rome, that he was called upon to deal with a body of rebels against the temporal power of the pope. He first admonished them solemnly in the language of the pulpit of the great sin of rebellion; but finding that he had not thereby succeeded in convincing them that he was in earnest, he took off his bishop's hat and gown and then poured forth against them, in the language of the street, all the terms of vituperation which the Italian language affords, with results which were more satisfactory. This incident comes to my mind as I think of one of the cases where Mr. Heath was called upon to make a collection. It was a collection against a young Irishman who had received four hundred dollars from his mother upon giving a demand note, and in her time of need refused to repay it. The young fellow came to the office, and Mr. Heath explained to him first, in language which was courteous and polite, that he had been asked to speak about this matter; that the note created a present obligation, and that the need for a payment was urgent and ought to be attended to. It made no impression. Mr. Heath then turned anew to the debtor and addressed him in language which I

venture to say he still remembers. He held up his conduct to him in lights in which it did not seem inviting. The terms used were not moderate, nor measured, nor free from epithets drawn from many vocabularies. The general impression upon the bystanders was, that few things were left unsaid. A justification of the means resorted to appeared in the result. The debtor had been addressed in language which he could understand and which persuaded him that Mr. Heath was in earnest. The result was, that he made a promise on the spot to be forthcoming with immediate payment, and in a few days afterward the promise was fulfilled.

The distaste which Mr. Heath had for work with pen and ink or work upon legal papers is not to be interpreted as an indication of laziness. He was far from deserving that reproach. I mentioned his habit of coming late to the office in the morning. This was because he had many cares at home. A large property in real estate was constantly being developed under his hands, and it was true, as he sometimes said by way of apology to those who awaited him, that he had done a day's work before appearing at the office. Once arrived there he remained until eight or nine o'clock in the evening. Sometime between twelve and one he ate a very light lunch,—an apple, a piece of bread, and perhaps drank a cup of cold coffee; this was all. During term time he, of course, came to his work earlier, appearing at the court house before nine. The uninterrupted work of the forenoon was then often followed by a colloquy with witnesses lasting through the whole intermission, his lunch being taken, if taken at all, in the presence of those with whom he was talking and without any cessation of intellectual work. After this came the court work of the afternoon until five, and still after this three hours in the office before he went to his house. He seemed to have, like the camel, the power of going a long time without eating and to be able to put forth all the time a surprising amount of energy. At Chelsea his habits

were different, as he accommodated himself there to the ways of the hotel ; but the regimen which he followed at Montpelier was, I should say, better adapted to his constitution. He never seemed so well as when doing two men's work on half a man's rations. When the almost incessant activity which he put forth from the time that he rose from his bed in the morning until the time that he lay down at night is taken into consideration, it seems remarkable that he could remain so well and strong under the strain. It is fortunate for him that he was able to repair so fully the energy put forth during the day by his night's rest. When his work was done every harassing thought seemed to leave his mind. He was usually asleep five minutes after his head touched the pillow.

At what time of life Mr. Heath's sympathies became enlisted in the temperance movement,—that is to say, the prohibition phase of it,—I could not state. He took occasion while state's attorney in 1862, 1863, and 1864 to try and see what an energetic official could do in the way of enforcement of the law, and saw reason for satisfaction in the results which he attained. Once he created what would be called by those who did not sympathize with him serious embarrassment, at a social entertainment, by openly declaring his disapproval of what was going on when conducted into a room where there was a bowl of punch on the table. During a long period of temperance agitation at Montpelier, when weekly meetings with volunteer speakers were held at a public hall, Mr. Heath frequently expressed his views on the subject. In the time that I was with him I never saw anything to cast a doubt upon his sincerity or entire personal consistency, although he was in some respects a man of strong appetites. He allowed himself to be influenced by his temperance views in his professional conduct, and did not accept retainers in any case which would call upon him to seemingly antagonize a movement of which he appeared elsewhere as a particular champion.

His interest in the temperance movement was only one phase of the interest which he took in any sort of movement which he thought to conduce to the public good. His activity in matters of education was only another phase of it. All affairs in which the public were concerned were affairs in which he felt that he had a personal interest and responsibility. He made it a point to attend all municipal meetings and take part in the proceedings. He was interested in securing the Berlin water supply to Montpelier. He was chosen to preside over the first meeting of citizens held to consider ways and means of drawing business capital to Montpelier. He was prominently interested in the efforts to build up the granite business, and communicated to the particular project which materialized much energy and helpfulness. His interest in any common measure was shown also in the narrower circle of the bar meetings, where he was always present and always a participant in the discussions.

Mr. Heath left too often the impression upon the minds of those with whom he came in contact that he was not a man of culture. He had in fact all the essentials of culture, and carried his accomplishments to a point to which many whose pretensions are constant and loud do not carry them. Those twin deities of the votaries of old-fashioned culture, the Greek and Latin languages, had a sort of fascination to his mind, a fascination which probably did not disclose itself when the acquisition of a certain number of lines a day was a task, but which made itself felt later in life when the disagreeable associations of the task were removed. By an accident one day, when some matters were pressing for attention, Mr. Heath happened, in opening an old English law book, to come upon a case where long abstracts from the pleadings, or from something else, were given in Latin. Like the discovery of the ink bottle, it operated as an obstacle to any further immediate progress in serious matters. The Latin gave forth a pleasing

aroma which must be inhaled. A book from which such a pleasing fragrance came was not to be closed abruptly. It must have been well along toward half an hour before he had his fill of subjunctives and infinitives, datives and ablatives, and was content to lay the book down. Naturally, we did not encounter Greek in law books, but he preserved a like fondness for that language, and once in my hearing in a jury argument quoted a few words from the fourth book of Xenophon's *Anabasis* in the original. I never knew how much of the adverse result in the case was to be attributed to the utterance of those mysterious syllables. He was a fastidious critic of English, and occasionally amused himself at the expense of book agents by finding grammatical mistakes, mixed metaphors, and what he considered errors of style in the literature which they wished to serve up to him. Disquisitions on the exact meaning of words and the precise difference between terms nearly synonymous were ready at any time to be poured forth, though he did not harp upon such themes in a manner to be tedious.

To his fondness for literature his own library bore witness. (I am speaking of the library at his house.) It was a room which he had expressly prepared, and the book shelves covered the walls and half of the double doors. Upon these shelves were to be found books on every variety of subject. He was omnivorous in the matter of reading. History, poetry, fiction, science, theology,—all were food for his mind. When he found the time for his reading no one knew, but the time was found, and the contents of the books once read were retained. I was surprised once, upon speaking of a German novel which I had recently read, and which, so far as I was aware, was new and perhaps outside of the usual course of reading, to discover that he had read it and remembered the incidents of the story. Occasionally in the office some casual remark would be the one thing needed to detach from its place in his mind some piece

of information stored there in long previous reading, and this would lead, by the association of ideas, to the disburdening of other and still other facts and illustrations, until the listener could not fail to be surprised at the amount of information which he seemed to carry in his head ready to be drawn upon at any moment. An illustration of his office conversations comes to mind as follows. Something had led up to the subject of the sterner phases of the beliefs of the Puritans. Mr. Heath commenced to speak of the realism with which, in his boyhood, certain Calvinistic preachers used to describe the punishments in store for the wicked in the after life. He passed from this to speak of Dante's different but equally realistic conceptions of the same thing, and recited the substance of a number of those passages in the *Inferno* where these terrors are described. This led him to speak of the practices of the Inquisition in Spain in the sixteenth century, the procedure of trial, the machinery of conviction, and the tragical ceremonial of the *auto-da-fe*. He passed over from the Inquisition to speak of one of its promoters, the Duke of Alva, describing the method of his administration in the Low Countries, his arrests and executions, and the resistance of the Dutch cities under siege. Something interrupted him here, or at any rate my memory does not preserve more, though the subject matter was of such a peculiar character that his words would be apt to make more than a temporary impression.

To turn from traits of his intellectual nature to traits of his emotional nature, his susceptibility to exhibitions of loyalty to himself should, among other things, be mentioned. If a set of persons or a family would remain faithful in their allegiance to him, he would go great lengths to assist them, even where there was no prospect of honor or reward in so doing. His espousal of the cause of the Magoons and some other clients who could be named, at all times and places and under all circumstances, is largely to be charged up to this trait. It is

possible that the trait is too narrowly defined, and that I should speak of his continuing loyalty to any one whom he had once befriended. He was very unwilling to sue clients, even in those cases, few in number, where they not only refused to pay their bills but openly turned against him. Some particularly shabby treatment by a worthless fellow whose cause he had once espoused and on some of whose chattels he had an overdue claim of a nature entitling him to take immediate possession, induced him at one time to say that a writ of replevin for the property might be prepared. It was prepared, but it lay on his desk day after day awaiting service and was never served.

He had a great fondness for children, though he had no children of his own, and never failed to engage in conversation any boy or girl whom chance brought into the office. A trait which was as pleasantly noticeable was his regard for men older than himself. I think it was characteristic of him from his boyhood. It happened once when he was in college that the father of one of his classmates came a long distance on foot to visit his son at the college town. I think he walked some thirty miles. He wore homemade garments and came into town travel stained. The son was ashamed of him and neglected him. Mr. Heath took the traveller into his care, was his guide to all the sights of the college and the town, and undertook to make and did make the day an agreeable one to him. Knowing his nature, I can understand that this was done out of obedience to impulses which were native to him, and that it is not to be taken as in any respect an affectation or parade of virtue. All young men would not have paid the same deferential respect to their own fathers' wishes as he did later on when he abandoned his plan of leaving Vermont for a wider field at the beginning of his business life. As a mature man it was pleasant to notice in him, as one might occasionally in the office, his considerate treatment of very old men. If

they were childish and whimsical he humored their whims. If they were garrulous he listened indefinitely to their talk. It was quite to his taste to be engaged on their side in defence of their persons and properties. An attempt to injure them in either was something, he once said with fervor in the court room, "beside which common, ordinary bank-breaking was decent."

The temptation is to speak too much at length of these amiable phases of his character which so many were, during his life, determined to overlook, and which, now that he is dead, will be so easily forgotten. It seems to be in accordance with the operation of a natural law that the dominant or more accentuated traits of a man's nature should, after he is gone, come to stand more and more for the whole man; but I regret it in his case. He was a person with a many-sided individuality, and the portrayal of the nobler side of his nature, to be complete and just, should be carried much more into detail than it is possible to here carry it.

V.

Dismissing any further attempt to fully characterize his personal traits, but little remains to be told of the story of his life. From 1859 until 1872 his home was in Plainfield. In 1872, when he was forty-three years old, he moved to Montpelier, and continued to live there until his death. During all this period he travelled very little. I have never known of a man of such intelligence, with a mind so hungry for information of all sorts, and with abundant means to go where he wished, who was so entirely devoid of any wish to travel; so entirely content to remain day after day and year after year within the same comparatively narrow circle. The technical limits of the "jail yard," as they are now established, would hardly have cramped him. Almost every day of the sixty years of his life was spent in the county of his birth and three counties adjoining — Chittenden, Lamoille, and Orange. It was in Chittenden that his college life was passed; it was in Lamoille that he pursued his professional studies; and it was in Washington and Orange that he practiced. At rare intervals he went to Boston on business, once in recent years to the seashore at Old Orchard, and in 1876 he joined the general pilgrimage to Philadelphia. The journey to Old Orchard was on business, and by a singular accident business turned up at Philadelphia. A respectable citizen of Washington county happened by misfortune to be standing near a pile of wares in the Turkish bazaar at the time that the proprietor discovered a pair of slippers to be missing. The Vermonter was charged with the offense, and the Turk succeeded in getting him arrested and taken to a place of confinement. A time was appointed for his trial or examination in one of the minor municipal criminal courts of the city, and everything seemed to be advancing to suit the pleasure of the Oriental. But the Washington county man had seen Mr. Heath on the exhibition

grounds and knew him to be in the city. He succeeded in getting word to him, and the call for help was quickly responded to. The scene in the court room had some unique features. Nobody could understand the Turk, who could not also understand or speak English. An avenue of communication was finally opened through two interpreters, one who spoke Turkish and French, another who spoke French and English. I am not aware just how the Turk was sworn. It was probably not in any way which prevented him from making a good story against the respondent. Mr. Heath's bearing on that occasion I should like to have seen; and yet it could not have been as characteristic of the man as his appearances in the home courts. Among strangers his tendency was to be more self-contained, less individual. The result of his intervention in the cause was entirely satisfactory. The defendant was discharged.

Mr. Heath's removal to Montpelier was preceded by negotiations for a large and fine property situated upon the easterly edge of the built-up part of Montpelier on the highway to Barre. The property was the Timothy Hubbard place, and Timothy Hubbard had been one of the men who had come to Montpelier soon after the early settlers and acquired wealth in the town. The negotiations were carried to a successful termination, and on November 15, 1872, Mr. Heath took a deed from the administrator of Mrs. Hubbard. The property was estimated to contain twenty-five acres. In a favorable location upon it was a large, square, two-story brick house, built in the substantial style of 1830. Mr. Heath moved into this house when he came to Montpelier, and it was thereafter his home. He took constant pleasure in improving it and in developing the whole estate. He built ornamental outbuildings of the sort adapted to a town house in the place of the old farm buildings. He made repairs which added to the convenience of the interior of the house. Gradually at first and afterwards more rapidly he brought his land into the market for building

purposes. He built houses himself and rented or sold them, taking great interest in the development of this property. Two streets have been laid out on this estate, one named Charles Street and the other named Putnam Street — Putnam being Mrs. Heath's maiden name. In all, twenty-one houses are now standing on the property which have been put there by Mr. Heath or by persons who received their title from him. In this development of the estate his own private premises were not cramped. An ample space was reserved around the house, the appurtenant land to which extends something like twelve rods on the street and more than that back. Mr. Heath was very happy in his home,—seldom, as has been said, away from it, and glad to return after his short intervals of absence. Some new project for making it more comfortable or more attractive would, it is safe to say, always have been under way if his life had been prolonged to the ripe years of his Blanchard ancestors.

Mr. Heath's death occurred on July 22d last, at Barre, whither he had gone on business. Dr. B. W. Braley of Barre, who knew Mr. Heath well, and who was present at the time of his death, gives me this account of the occurrence: "Mr. Heath came here on the morning train; I think, arrived about eleven A.M. While sitting in the bank, I noticed Mr. Heath and Mr. Aldrich (L.F.), the president of the bank, coming down the opposite side of the street, evidently conversing in a very jovial manner. Without any purpose, I crossed over and met them on the sidewalk in front of Mr. Mills's store. We three were speaking of nothing in particular, but carrying on a commonplace conversation, when Mr. Heath called attention to the granite curbing of the sidewalk then being raised and repaired, and to the fact that it was being made to conform to the curve of the street and not with the face of the buildings in front of which it ran; and he walked into the middle of the street, as I supposed to get a better general view of the street up and

down. He had no more than reached the middle when he threw up his hands and fell to the ground. Mr. Aldrich, myself, and several others were with him instantly. A glance was sufficient to diagnose the condition. 'We carried him to the drug store near by and in a few minutes he was dead. I do not think he lived over five minutes after he fell. Word was sent at once to his relatives in town and to Montpelier. The cause of the death was rupture of a blood vessel at the base of the brain, the resulting hemorrhage producing pressure upon that part of the brain at the origin of the nerves which supply the heart and lungs with nerve force. I am satisfied he was never conscious from the time he fell. I never saw him apparently in better health or spirits than that morning, and death seldom comes any quicker.'

Mr. Heath leaves one brother, son of Elias Heath by a second marriage — Lester E. Heath, now engaged in mercantile business in Watertown, New York. He leaves no son. Taking into consideration how rarely it is that large ability with a tinge of eccentricity ever recurs in exactly the same form under any circumstances, and taking into consideration the different circumstances under which young men nowadays grow up, it may be safely asserted that no one will ever again appear at Washington county bar who will exactly take his place.

APPENDIX.

REPORT OF COMMITTEE ON BALLOT REFORM.

To the Members of the

Vermont Bar Association :

In view of the rapidly increasing interest in the subject of ballot reform, and the encouraging progress made during the past two years, resulting in the adoption of the principles embodied in what is termed the Australian System of voting in the States of Massachusetts, Indiana, Montana, Rhode Island, Wisconsin, Tennessee, Minnesota, and Missouri, you are respectfully requested to appoint a committee to draft a bill embracing the essential features of the same, to present at the next session of our state legislature.

In explanation of this request, it may add force to the suggestion by calling your attention to the action taken by the Commonwealth Club of New York city in 1887. As more fully explained in the September *Century*, "the committee appointed by it to draft a bill for presentation to the New York legislature, spent a great deal of time in devising a "simple and comprehensive scheme for applying the Australian "system to American election methods. Their bill has served

‘as the model for all subsequent measures, and while the eight “laws now in existence differ from it in details, its underlying “principles are to be found without modification in all of them.”

Had it not been for the veto of Governor Hill, the law as devised by that committee would have been adopted by the State of New York as it was passed by the legislature.

The fact that “when the state legislatures came together in January last there was scarcely one of them which did not have before it in some form a measure for a change in existing ballot systems,” is a strong indication that the need of a change is very generally and urgently felt.

When we are informed that “the Australian method was the favorite everywhere, because it had stood the test of experience in Australia for thirty years, in England for eighteen years, and in Canada for sixteen years,” attention is naturally turned to that system for immediate and permanent relief.

In view of the recent practical demonstration of its satisfactory working in the States of Montana and Connecticut, overcoming, in a large measure, the objections urged by its most earnest opponents, we can surely look with confidence to its successful adoption in Vermont.

It may not seem necessary to pass laws at the next session of our state legislature requiring all the smaller towns to be confined to the three fundamental principles underlying the Australian system, which are:—1st, an official ballot, printed and distributed at the public expense; 2d, absolute secrecy in voting; 3d, ample provision for independent nominations;—but there undoubtedly should be such action taken as will give the larger towns like Rutland, Burlington, St. Albans, Bennington, Montpelier, Brandon, Middlebury, Vergennes, and perhaps

all towns having, say over 2000 or 3000 inhabitants, an improved system of voting, which shall be governed less by fraud and the dictates of caucus packers and scheming politicians.

My purpose in calling attention thus early to the subject is to give the committee representing the various sections of the state, which I am exceedingly desirous should be appointed by your Association, the time and opportunity to carefully observe the practical workings of the new system at the coming election in Massachusetts in November, also in other states later, believing that a law devised by such a committee would carry weight at the legislature which would not be given to one introduced by any single individual, whatever its merits might be. It is my wish also that this may lead to a general discussion of the subject by the press throughout the state, thereby enabling the representatives chosen for the next session to go there with a more distinct idea of what is desirable and best for the good of the state, and be better prepared to act understandingly when the subject comes up for discussion and action

Respectfully submitted.

CHARLES P. HARRIS

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VERMONT
BAR ASSOCIATION.

MEMBERS, PROCEEDINGS, PAPERS AND
ADDRESSES.

1890.

VOL. II. No. 5.

BARRE:
THOS. H. CAVE, BOOK AND JOB PRINTER.
1891.

OFFICERS AND COMMITTEES.—1890-91.

President,

H. R. START, Bakersfield.

Vice Presidents,

J. K. BATCHELDER, Arlington.

E. B. TAFT, Burlington.

J. L. MARTIN, Brattleboro.

Secretary,

GEORGE W. WING, Montpelier.

Treasurer,

HIRAM CARLETON, Montpelier.

Managers,

H. R. START, *ex officio*, Bakersfield.

JOHN H. SENTER, Montpelier.

GEORGE E. LAWRENCE, Rutland.

J. K. DARLING, Chelsea.

J. E. DICKERMAN, Newport.

COMMITTEE ON ADMISSIONS.

Addison County.....	H. C. ROYCE, Middlebury.
Bennington County.....	O. M. BARBER, Arlington.
Caledonia County.....	ELISHA MAY, St. Johnsbury.
Chittenden County.....	H. S. PECK, Burlington.
Essex County.....	F. D. HALE, Lunenburg.
Franklin County.....	W. D. STEWART, Bakersfield.
Lamoille County.....	J. W. PAGE, Jeffersonville.
Orange County.....	E. W. SMITH, Wells River.
Orleans County.....	P. J. FARRELL, Newport.
Rutland County.....	F. M. BUTLER, Rutland.
Washington County.....	A. G. FAY, Montpelier.
Windham County.....	E. L. WATERMAN, Brattleboro.
Windsor County.....	W. B. C. STICKNEY, Bethel.

COMMITTEE ON PROFESSIONAL CONDUCT.

KITTREDGE HASKINS, Brattleboro.

JOEL C. BAKER, Rutland.

CHARLES A. PROUTY, Newport.

COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

DANIEL ROBERTS, Burlington.

HENRY C. IDE, St. Johnsbury.

W. C. FRENCH, Woodstock.

COMMITTEE ON LEGAL HISTORY AND BIOGRAPHY.

GEORGE W. HARMAN, Bennington.

ALFRED A. HALL, St. Albans.

Z. S. STANTON, Roxbury.

NEW MEMBERS.

HENRY M. MCFARLAND, Hyde Park, . . .	Lamoille, April, 1881.
ROGER W. HUBBARD, Hyde Park, . . .	General Term, 1887.
JOSEPH C. ENRIGHT, Windsor, . . .	Windsor, December, 1881.
HIRAM P. DEE, St. Albans, . . .	General Term, 1886.
JAMES M. SLADE, Middlebury, . . .	Addison, December, 1868.
CHARLES D. WATSON, St. Albans, . . .	General Term, 1886.
ALMON P. TUPPER, Middlebury, . . .	Addison, December, 1859.
H. F. WOLCOTT, Winooski, . . .	Chittenden, April, 1876.
F. C. SMITH, St. Albans, . . .	General Term, 1885.

MEMBERS,

WITH RESIDENCE AND COUNTY AND TERM OF ADMISSION TO BAR.

ADAMS, HENRY C.	St. Albans.	Franklin, December, 1854.
ALEXANDER, M. H.	Jericho.	Franklin, April, 1883.
ALFRED, FRANK E.	Newport.	Franklin, September, 1876.
ALLBE, ALBERT M.	Springfield.	Windham, April, 1843.
ASHLAND, EZEKIEL A.	St. Albans.	General Term, 1887.
BAKER, JOEL C.	Rutland.	Rutland, March 1862.
BALDWIN, F. W.	Barton.	Lamoille, December, 1872.
BALLARD, GEORGE A.	Fairfax.	Franklin, September, 1861.
BALLARD, HENRY	Burlington.	{ Albany, N.Y., May, 1863.
BARRETT, JAMES	Rutland.	{ Chittenden, September, 1863.
BARRETT, JAMES C.*	Rutland.	Windsor, December, 1840.
BARRETT, RUSH P.	Rutland.	Windsor, May, 1877.
BATES, HENRY C.	St. Johnsbury.	Windsor, December, 1878.
BATCHELDER, JAMES K.	Arlington.	{ Coos, N.H., November, 1868.
BATCHELDER, WILLIAM	Windsor.	{ Orleans, June, 1866.
BELDEN, HENRY C.	Minneapolis, Minn.	Bennington, June, 1866.
BINGHAM, M. A.	Essex Junction.	Windsor, May, 1872.
BISBEE, EDWARD W.	Barre.	Caledonia, December, 1863.
BLISS, WILLIAM H.	Middlebury.	Lamoille, May, 1868.
BLODGETT, HARRY	St. Johnsbury.	Washington, Sept., 1871.
BOLLES, FRANCIS A.	Bellows Falls.	Orange, December, 1877.
BOYCE, OSMAN B.	Barre.	Caledonia, June, 1873.
BOYCE, WILLIAM A.	Barre.	Windham, April, 1872.
BOYDEN, NELSON L.	Randolph.	{ Albany, N.Y., March, 1871.
BRIGHAM, WALDO	Hyde Park.	{ Essex, September, 1871.
BRIGGS, GEORGE	Brandon.	Washington, March, 1869.
BROMLEY, JEROME B.	Castleton.	Orange, June, 1865.
		Lamoille, May, 1857.
		Rutland, September, 1868.
		Rutland, September, 1849.

BROWN, ROME G.	Minneapolis, Minn.	Washington, October, 1887.
BROWNELL, C. W., Jr.	Burlington.	Chittenden, September, 1872.
BUCK, MYRON	St. Albans.	Franklin, April, 1854.
BULLARD, B. E.	Hyde Park.	General Term, 1889.
BULLARD, VERNON A.	Underhill.	Lamoille, April, 1885.
BURKE, JOHN C.	Albany.	Orleans.
BURLESON, GEORGE W.	East Fairfield.	Franklin, September, 1875.
BURNAP, WILDER L.	Burlington.	Chittenden, September, 1866.
BUTLER, F. M.	Rutland.	Windham, March, 1877.
BUTTERFIELD, A. AUGUSTUS	Jacksonville.	Windham, April, 1867.
BUTTERFIELD, O. E.	Wilmington.	Windham, April, 1867.
CAHOON, GEORGE W.	Lyndon.	Caledonia, June, 1855.
CARLETON, HIRAM	Montpelier.	Washington, Sept., 1865.
CARLETON, FREDERICK P.	Montpelier.	General Term, 1889.
CARR, JOHN L.	Barton.	Orleans, September, 1878.
CHAMBERLIN, PHINEAS *	Bradford.	Orange, June, 1877.
CHASE, ISAAC N.	East Fairfield.	
CLARKE, CORNELIUS W.	Chelsea.	Orange, January, 1849.
CLARK, OSMAN D.	Montpelier.	Washington, March, 1879.
CROSS, ALBERT P.	St. Albans.	Franklin, April, 1869.
CUSHMAN, JUDSON E.	West Randolph.	
DALE, GEORGE N.	Island Pond.	Washington, March, 1856.
DANA, CHARLES S. *	St. Johnsbury.	Caledonia, December, 1840.
DANA, EDWARD	Rutland.	Rutland.
DARLING, J. K.	Chelsea.	Orange, June, 1874.
DAVENPORT, CHARLES N. *	Brattleboro.	Windham, April, 1854.
DAVIS, GILBERT A.	Windsor.	Windsor, May, 1859.
DAVIS, PARK	Sioux Falls, Dak.	Windham, September, 1864.
DEAVITT, THOMAS J.	Montpelier.	Washington, March, 1866.
DENISON, JOSEPH D.	Royalton.	Windsor, May, 1869.
DICKERMAN, J. E.	Newport.	Orleans, June, 1854.
DICKEY, ASA M.	Bradford.	Orange, June, 1845.
DICKEY, GEORGE A.	Bradford.	Caledonia, June, 1877.
DILLINGHAM, PAUL *	Waterbury.	Washington, March, 1823.
DILLINGHAM, WILLIAM P.	Waterbury.	Washington, Sept., 1866.
DUNNETT, ALEXANDER	St. Johnsbury.	Orange, June, 1877.
DUNTON, WALTER C. *	Rutland.	Rutland, September, 1858.
DURANT, LUTHER L. *	Montpelier.	Washington, Nov., 1850.
EDDY, CHARLES B.	Bellows Falls.	Windham, April, 1858.
EDDY, JONATHAN G.	Brattleboro.	Windham, April, 1869.
EDMUNDS, GEORGE F.	Burlington.	Chittenden, March, 1849.
EDSON, H. G.	St. Albans.	Franklin, September, 1844.

EDWARDS, JOHN L.	Newport.	Orleans, June, 1843.
EMERY, CURTIS S.	Chelsea.	Orange.
ENRIGHT, JOHN J.	Burlington.	Chittenden, 1883.
FARNHAM, ROSWELL	Bradford.	Orange, January, 1857.
FARRELL, PATRICK J.	Newport.	Orleans, October, 1887.
FARRINGTON, WILLARD	St. Albans.	Franklin, September, 1862.
FAY, ALLAND G.	Montpelier.	General Term, 1884.
FIELD, HENRY K.	Oakland, Cal.	Windham, September, 1871.
FIFIELD, BENJAMIN F.	Montpelier.	Washington, March, 1858.
FISK, H. C.	Morrisville.	
FOSTER, JOHN G.	Derby Line.	
FOSTER, D. J.	Burlington.	Chittenden, April, 1883.
FREEMAN, D. G.	Swanton.	Franklin, September, 1876.
FRENCH, WARREN C.	Woodstock.	Windsor, May, 1844.
GARDNER, ABRAHAM B.*	Bennington.	Rutland, April, 1844.
GARY, F. E. H.	Boston, Mass.	Washington, Sept., 1882.
GLEASON, CARLISLE J.	Montpelier.	Washington, Sept., 1858.
GLEASON, S. M.	Thetford Centre.	Orange, December, 1861.
GLEED, PHILIP K.	Morrisville.	Lamoille, December, 1859.
GORDON, TRUMAN R.	Montpelier.	Washington, Sept., 1877.
GREGORY, JOHN W.	Waitsfield.	Washington, Sept., 1878.
GROUT, JOSIAH	Derby.	Orleans, 1865.
GROUT, THEOPHILUS	Newport.	Orleans, September, 1871.
GROUT, WILLIAM W.	Barton.	Caledonia, December, 1857.
HALE, F. D.	Lunenburg.	
HALL, ALFRED A.	St. Albans.	Franklin, April, 1873.
HARMAN, GEORGE W.	Bennington.	Rutland, September, 1833.
HARMAN, HENRY A.	Rutland.	Bennington, December, 1871.
HARVEY, O. F.	West Concord.	Iowa, 1857.
HARVEY, RONEY M.	Topsham.	Orange, December, 1870.
HASELTON, SENECA	Burlington.	
HASKINS, KITTREDGE	Brattleboro.	Windham, April, 1858.
HEATH, CHARLES H.*	Montpelier.	Lamoille, December, 1859.
HEBARD, SALMON B.	Chelsea.	Orange, December, 1861.
HEYWOOD, HENRY	Lancaster, N. H.	Essex, March, 1860.
HOGAN, CHARLES P.	Sheldon.	Lamoille, May, 1868.
HOWE, CHARLES L.	Rutland.	Rutland, March, 1882.
HUNTON, AUGUSTUS P.	Bethel.	Washington, April, 1837.
HUSE, HIRAM A.	Montpelier.	{ Albany, N. Y., May, 1867.
IDE, HENRY C.	St. Johnsbury.	{ Orange, June, 1869.
JONES, JOSEPH C.	Rutland.	Caledonia, December, 1870.
		General Term, 1889.

JOHNSON, WILLIAM E.	Woodstock.	Windsor, May, 1865.
KELTON, OTIS N.	Montgomery.	Franklin, September, 1877.
KEMP, HARLAN W.	Montpelier.	Washington, Sept., 1880.
KENDALL, P. REDFIELD *	Rutland.	Orleans, September, 1873.
KENFIELD, W. H. H.	Cambridge.	Lamoille, December, 1863.
KENNEDY, GEORGE W.	Waterbury.	
LAIRD, FRED L.	Montpelier.	General Term, 1887.
LAMSON, JOSEPH P.	Cabot.	Lamoille, April, 1860.
LAWRENCE, GEORGE E.	Rutland.	Addison, June, 1868.
LAWRENCE, L. L.*	Burlington.	Chittenden, April, 1866.
LESLIE, CHARLES BRIGHAM	Wells River.	Orange, June, 1853.
LIVINGSTON, JOSIAH O.	Montpelier.	Lamoille, May, 1861.
LUCIA, J. H.	Montpelier.	Addison, June, 1868.
MANN, HOSEA, Jr.	Wilmington.	Windham, March, 1882.
MANSUR, Z. M.	Island Pond.	
MARTIN, JAMES L.	Brattleboro.	{ Albany, N.Y., May, 1869.
MARTIN, JOSEPH G.	Manchester.	{ Bennington, June, 1869.
MAY, ELISHA	St. Johnsbury.	Windham, April, 1874.
MCFEETERS, EMMETT	Enosburgh Falls.	Caledonia, December, 1868.
MCGETTRICK, F. W.	St. Albans.	Franklin, September, 1880.
MELDON, PAT M.	Rutland.	
NICHOLS, ALBRO F.	St. Johnsbury.	Rutland, September, 1882.
NOBLE, GUY C.*	St. Albans.	Caledonia, June, 1873.
ORMSBEE, E. J.	Brandon.	Franklin, September, 1861.
OVIATT, HENRY	Montpelier.	Rutland, March, 1861.
PAGE, J. W.	Jeffersonville.	Washington, March, 1875.
PALMER, EDWIN F.	Waterbury.	
PAUL, NORMAN	Woodstock.	Washington, Sept., 1864.
PECK, HAMILTON S.	Burlington.	Windsor, December, 1862.
PECKETT, JOHN B. Jr.	Bradford.	Chittenden, April, 1873.
PHELPS, EDWARD J.	Burlington.	Orange, June, 1882.
PINGREE, SAMUEL E.	Hartford.	Addison, December, 1843.
PITKIN, CLARENCE H.	Montpelier.	Windsor, December, 1859.
PLUMLEY, FRANK	Northfield.	Washington, March, 1872.
POLAND, LUKE P.*	Waterville.	Lamoille, May, 1869.
PORTER, CHARLES W.*	Montpelier.	Lamoille, December, 1836.
POWELL, E. HENRY	Richford.	Washington, Sept., 1874.
PROCTOR, REDFIELD	Proctor.	Franklin, September, 1866.
PROUT, JOHN *	Rutland.	Windsor, May, 1860.
PROUTY, CHARLES A.	Newport.	Addison, June, 1839.
READ, LAVANT M.	Bellows Falls.	Windham, April, 1869.

REDINGTON, LYMAN W.	Rutland.	{ Milwaukee, Wisconsin, 1871. Rutland, September, 1873.
ROBERTS, DANIEL	Burlington.	Rutland, September, 1832.
ROBERTS, ROBERT	Burlington.	Chittenden, September, 1871.
ROGERS, D. ALLEN *	Wells River.	Coos, N. H., May, 1854.
ROWELL, JOHN W.	West Randolph.	Orange, June, 1858.
ROWELL, WILLIAM R.	North Troy.	Franklin, September, 1870.
ROYCE, HEMAN S.	St. Albans.	Franklin, April, 1844.
ROYCE, HOMER CHARLES	Middlebury.	Franklin, October, 1887.
RUSSELL, J. W.	Burlington.	Chittenden, September, 1871.
RUSTEDT, H. E.	Richford.	Franklin, April, 1873.
SAFFORD, ALFRED G.	Washington, D.C.	Franklin, September, 1857.
SEAVER, THOMAS O.	Woodstock.	Windsor, December, 1864.
SENER, JOHN H.	Montpelier.	Washington, March, 1879.
SHAW, WILLIAM G.	Burlington.	Chittenden, March, 1853.
SHURTLEFF, STEPHEN C.	Montpelier.	Washington, March, 1863.
SMALLEY, B. B.	Burlington.	Chittenden, September, 1863.
SMILIE, MELVILLE E.	Montpelier.	Washington, March, 1866.
SMITH, E. CURTIS	St. Albans.	Franklin, September, 1877.
SMITH, EDGAR W.	Wells River.	Orange, December, 1872.
SMITH, F. WALWORTH	Leadville, Colo.	Franklin, September, 1877.
SMITH, HENRY H.*	Rutland.	Rutland, September, 1858.
SMITH, WARREN H.	Rutland.	Orange, June, 1843.
SMITH, WALTER P.	St. Johnsbury.	Lamoille, May, 1869.
SPENCER, GEORGE B.	Rutland.	
STAFFORD, WENDELL P.	St. Johnsbury.	Caledonia, June, 1882.
STANTON, ZED S.	Roxbury.	Washington, March, 1880.
START, HENRY R.	St. Albans.	Franklin, April, 1867.
STEVENS, HIRAM F.	Minneapolis, Minn.	Franklin, September, 1874.
STEWART, JOHN W.	Middlebury.	Addison, December, 1856.
STEWART, W. D.	Bakersfield.	Franklin, April, 1872.
STICKNEY, WILLIAM B. C.	Bethel.	
STICKNEY, WILLIAM W.	Ludlow.	Windsor, December, 1878.
STODDARD, E. W.	Brattleboro.	
STOWE, GEORGE L.	Chelsea.	Chittenden, September, 1875.
SWINGTON, F. G.	Rutland.	Rutland, March, 1878.
TAFT, ELIHU B.	Burlington.	Chittenden, April, 1873.
TARBELL, CHARLES P.	South Royalton.	Orange, 1870.
TENNEY, A. D.	St. Albans.	Franklin, September, 1871.
THOMPSON, L. H.	Irasburgh.	Orleans, February, 1871.
TYLER, JAMES M.	Brattleboro.	Windham, September, 1860.
TYLER, MILTON R.	Rochester, Minn.	Franklin, September, 1860.

VEAZEY, W. G.	Rutland.	{ Albany, N.Y., June, 1860. Windsor, December, 1860.
WALES, GEORGE W.*	Burlington.	
WALES, TORREY E.	Burlington.	Chittenden, March, 1845.
WALKER, ALDACE F.	Rutland.	{ New York City, May, 1867. Rutland, September, 1873.
WALKER, WILLIAM H.	Ludlow.	Windsor, December, 1861.
WATERMAN, ELEAZER L.	Brattleboro.	Windham, September, 1863.
WATSON, JOHN H.	Bradford.	Orange, December, 1877.
WILDS, CHARLES M.	Middlebury.	Addison, June, 1880.
WILBUR, L. F.	Burlington.	Lamoille, December, 1856.
WILLARD, ASHTON R.	Boston, Mass.	Washington, March, 1882.
WILSON, JAMES J.	Bethel.	Windsor, May, 1858.
WILSON, WILLIAM D.	St. Albans.	Franklin, June, 1857.
WING, GEORGE W.	Montpelier.	Washington, March, 1868.
WING, JOHN G.	Montpelier.	Washington, Sept., 1880.
WING, JOSEPH A.	Montpelier.	Washington, April, 1836.
WOODBIDGE, F. E.*	Vergennes.	Addison, December, 1843.
YOUNG, JOHN	Newport.	Orleans, June, 1862.

HONORARY MEMBERS.

THE JUDGES OF THE UNITED STATES COURTS IN THIS STATE.

THE JUDGES OF THE SUPREME COURT.

BENNETT, EDMUND H.	Taunton, Mass.
EVARTS, WILLIAM M.	New York City.
HALL, HILAND	Bennington.
POMEREY, JOHN M.*	Burlington.
STOUGHTON, E. H.*	New York City.

* Deceased.

TREASURER'S REPORT.

HIRAM CARLETON, *Treasurer*,

In Account with the VERMONT BAR ASSOCIATION:

1889.

DEBIT.

Oct. 23.	To deposit in Burlington Savings Bank	\$370 18
	“ deposit in Montpelier Savings Bank and Trust Co..	586 76
	“ cash received for annual dues and admission fees ...	320 00
	“ interest on deposits.....	33 78
		\$1310 72

1889.

CREDIT.

By paid for annual banquet	\$109 50
“ “ for printing and binding	105 57
“ “ for stamped envelopes.....	55
“ balance cash assets	1095 10
	\$1310 72

ASSETS, OCTOBER 22, 1890.

Cash deposited in Burlington Savings Bank to the credit of Hiram Carleton, Treasurer, book 9943.....	\$389 00
Cash deposited in Montpelier Savings Bank and Trust Company to the credit of Hiram Carleton, Treasurer, book 5442.....	706 10
Total assets.....	\$1095 10

SUMMARY OF PROCEEDINGS.

1890.

The Association met at the Court House in Montpelier, October 21, 1890, and was called to order by President Thompson.

Records of last regular meeting read and approved.

The Committee on Admissions reported, nominating for membership James M. Slade and A. P. Tupper of Middlebury; John H. Mimms, Charles D. Watson, Fuller C. Smith and Hiram P. Dee of St. Albans; Orion N. Barber of Arlington; J. C. Enright of Windsor; H. F. Wolcott of Winooski; Henry M. McFarland and Roger W. Hubbard of Hyde Park.

President Thompson then read his address, entitled "The Origin, Growth and Achievements of the Bar."

Memorial papers were read by E. A. Sowles on Herman W. Beardsley; by Jonathan Ross on Luke P. Poland; by F. E. Alfred on H. C. Wilson. Elisha May contributed a paper on "The Wit and Humor of the Bar."

On motion of Elihu B. Taft, a committee of one from each county was appointed to nominate officers for the year ensuing. The President appointed as such committee H. C. Royce, J. K. Batchelder, Elisha May, P. K. Gleed, J. E. Dickerman, N. L. Boyden, John H. Senter, J. C. Enright, Hosea Mann, J. E. Cushman, A. A. Hall and F. M. Butler.

On motion of A. G. Fay, all those contributing papers were requested to furnish the Secretary with the same for publication.

The thanks of the Association were voted to all who had contributed papers, and the Secretary was instructed to convey to Judge Ross the thanks of the Association for his able, instructive and interesting paper upon the late Judge Poland.

The Treasurer, Hiram Carleton, presented his report, showing balance in his hands to be \$1,095.10. It was accepted.

Elihu B. Taft offered an amendment to the constitution, Article XV., changing the annual dues from two dollars to one dollar.

The committee to nominate officers for the ensuing year made their report, which was adopted, and the persons therein named were declared duly elected. (See list on preceding page.) The Secretary was instructed to procure a register for use at the annual meetings.

George E. Lawrence offered the following resolution:

Resolved, That the present committee on examination for admission to the bar, be instructed to request of the court a modification of the rules for admission, so that students who are graduates of colleges or law schools requiring a full four years' course of study, be admitted upon passing the requisite examination at the end of two years instead of three as now required.

The resolution was discussed by Messrs. Baker, Young, Senter, Kendall, H. C. Royce, Foster, Lawrence and Boyden, and on motion was ordered to lie. It was then moved that the resolution be referred to a committee of three, to be appointed by the President, such committee to investigate the matter and report at the next annual meeting; the resolution to be printed and sent to each member of the Association, requesting their opinion as to the advisability thereof. Adopted. The President appointed as such committee, George E. Lawrence, John Young and Judson E. Cushman. On motion of Mr. Fay, the committee were instructed to request the opinion of the members as to increasing the time, etc.

Mr. Paul moved that the Association elect three delegates to the American Bar Association. Carried; and J. K. Batchelder, P. K. Gleed and Joel C. Baker were elected.

Mr. Kendall made the same motion as to the National Bar Association of the United States, and P. R. Kendall, C. P. Hogan and C. A. Prouty were elected, with power to appoint their own substitutes.

Mr. Paul moved that the Board of Managers notify the Secretary of the programme of exercises, and that the Secretary embody the same in the call for the annual meeting. Adopted. The Secretary was also instructed to advertise notice of the meeting and invite the public. On motion of Mr. Paul, it was voted that hereafter no thanks be returned to members of this Association.

The special committee on mesne and final process, and providing remedies supplemental to execution, submitted a report in the form of two bills, which will be found in the Appendix. After some discussion, on motion of Mr. Kendall the Association voted to request the judiciary committee of the House to report from that committee "An act to regulate mesne process," as prepared by Mr. Daniel Roberts.

The "Act providing remedies supplemental to execution" was taken up for discussion. Mr. Deavitt moved to amend by inserting the words "county clerk" wherever the words "court of insolvency" occur. Mr. Baker moved to amend the amendment by the words "any judge of the supreme court." Mr. Baker's motion prevailed, and the motion as amended was adopted. On motion of Mr. Dunnett, the judiciary committee of the House were requested to report the bill as amended and to urge its passage.

The Committee on History and Legal Biography submitted their annual report, which will be found in the Appendix.

The President appointed the standing committees; and no further business appearing, adjourned without day.

THE PRESIDENT'S ADDRESS.

THE ORIGIN, GROWTH AND ACHIEVEMENTS OF THE BAR.

Gentlemen of the Vermont Bar Association :

One of the objects of this Association is to elevate the standard of the legal profession and to create a high professional spirit among its members. As tending to accomplish this object, your attention is invited to a brief survey of the origin, growth and achievements of the bar in some of the leading nations of the world. In the discussion of this subject I shall make no attempt at originality.

An able German writer has aptly said : "The end of the law is peace. The means to that end is war. So long as the law is compelled to hold itself in readiness to resist the attacks of wrong—and this it will be compelled to do until the end of time—it can not dispense with war. The life of the law is a struggle,—a struggle of nations, of the state power, of classes, of individuals. All the law in the world has been obtained by strife. * * * Law is an uninterrupted labor, and not of the state power only, but of the entire people. * * * Every individual placed in a position in which he is compelled to defend his legal rights, takes part in this work of the nation, and contributes his mite toward the realization of the idea of law on earth."

It is self-evident that, in this struggle of the individual for his rights before the law and under the law, the weak, the humble, the poor, the ignorant, and the slow of speech, must be placed at great disadvantage in a contest with the strong, the great, the rich, the learned and the eloquent. From this natural and artificial inequality of men, our profession, the advocate, he who pleads the cause of another, must have had its origin. Hence we can believe that it must have existed in some form, though perhaps not as a separate calling, from the time when men recognized social, personal and property rights. In that grand old poem, the book of Job, written more than three thousand years ago, Job exclaims, "O that one might plead for a man with God, as a man pleadeth for his neighbor," a remark which seems to indicate that in that early day it was not an uncommon thing for one man to plead the cause of another. The great French chancellor D'Aguesseau was not dealing in mere rhetoric, but was stating historic truth when he declared that the profession of advocates was "an order as ancient as the magistracy, as noble as virtue, as necessary as justice."

Of course the legal profession has not been found in barbarous countries, nor has it generally flourished, if it has existed, under despotic rule, although there are instances where under arbitrary power it has been held in the highest estimation. Under popular governments and free institutions it has had its most complete development and won its greatest achievements. In every country in which an enlightened system of jurisprudence has been developed and administered for the benefit and protection of its citizens our profession has been found, and has always proved an indispensable and efficient aid in the administration and development of the law.

It is said that the "ancient Egyptians expressly forbade advocates to plead in their courts, on the ground that they darkened the administration of the laws." This has been the

favorite argument of despotism against the legal profession. It has always dreaded the searching investigation of facts and the fearless comments upon them which the advocate is bound to make in the trial of his cause.

It has been well said, that "in various departments of intellectual exertion—in philosophy, poetry, oratory, and the fine arts—the Greeks have never been surpassed, but they contributed almost nothing to the science of jurisprudence." To us, their judicial proceedings seem more like the performances of a large Vermont town meeting than like the calm and orderly proceedings of a court of justice.

In ancient Athens, the rule in early times seems to have been that an orator was not allowed to appear as an advocate in the cause of another unless he had some interest in the cause himself. In the course of time, this rule seems to have been so relaxed that if a suitor was prevented by sickness or other inability from pleading his own cause, a friend or relative might act as an advocate to plead the cause for him.

In ancient Rome, the legal profession formed an able, honorable and powerful body. There the order seems to have originated from the gratuitous services rendered by the wealthy and noble patron to his poor and perhaps plebeian followers, who were called clients. From this practice sprang the lawyers of Rome, who gave their counsel and opinions to clients and who appeared in court and advocated their cases, taking compensation for their services. It is said that the term advocate was not applied to a pleader in the courts until the time of Cicero.

Dull indeed must be the imagination of the lawyer who, standing amid the ruins of the Roman forum, is not thrilled at the thought of the forensic scenes which were once enacted there. He recalls the place as it existed in its republican simplicity, where were displayed the noble virtues and the

heroic greatness of the men who made Rome the mistress of the world, and where were discussed and determined the destiny of nations. The scene changes, and he beholds it surrounded and adorned with all that Italian art could conceive and achieve in the way of lofty and noble columns of rare marble and monuments and statues of heroes and gods, until the simple majesty of the old forum is overshadowed by the splendor of the imperial city. Here in this narrow space Cato, Cethegus, styled "the flower of the people," "the orator with the silver tongue," Mark Antony, the grandfather of the triumvir, Crassus Hortensius, and others made their great efforts as advocates in behalf of their clients and won forensic laurels that have given them an enduring fame.

Had the speeches of the great lawyers of Rome come down to us, they would be an interesting study to the lawyer of today; but the same infelicity which attends the reputation of great lawyers of our time was the lot of the Roman advocate in his day. His most brilliant efforts became a passing tradition, almost at their birth. The fragments of all the speeches known to exist, delivered by the Roman orators, have been collected by a writer by the name of Meyer, in a single octavo volume. It covers a period from B. C. 350 to A. D. 410, and includes the names of one hundred and fifty-eight eminent Roman advocates. This volume, of course, does not include the complete speeches like those of Cicero, which have come down to us.

In connection with the great Roman advocates whose names have been mentioned, there naturally occurs to the lawyer interested in the study of the Roman law, the names of the Roman jurists, Papinian, Paulus, Ulpian and Gaius.

In some respects the most brilliant period of the Roman bar was during the days of the republic, but it also flourished and held an honorable position under the empire. Notwithstanding the military spirit of the times, the "constitutions" of the Roman emperors "declared that if advocates sustained their

part in the state as they ought, they were no less benefactors of mankind than if they periled their lives in battle to save their country and families from ruin."

If Rome is the "mother of dead empires," she is also the mother of living laws and government, and this proud distinction is due to the labors and genius of her lawyers, which in the course of time bore fruit in the shape of the immortal Code, Digest and Institutes of Justinian. They were the work of lawyers commissioned to perform it, although Justinian takes the glory of their labors. Mackenzie in his Roman Law, justly says of the merits of Justinian's Collection: "This great body of jurisprudence, viewed as a system of private law, has unquestionably exercised the most beneficial influence, both on moral and political science, and has introduced more just and liberal ideas concerning the nature of civil government, and the administration of justice, in all the nations of modern Europe which rose on the ruins of the Roman empire." For some years past, interest in and study of the Roman law by the bar of England and of this country has deepened the culture and broadened the views of our profession on the subject of general jurisprudence and has enriched our legal literature with many valuable treatises.

It would be interesting to glance at some of the ordinances issued to regulate the practice and conduct of Roman advocates and to prevent one party from retaining so many counsel on his side of the case that his adversary could not obtain the necessary legal assistance, but want of time prevents this as well as a glance at the caricatures and sarcasms aimed at the profession by the popular writers of that day.

Among the nations carved out of the ruins of the Roman empire, advocates existed during the middle ages, but few traces of their work or repute in those dark ages are found. Probably the profession as it exists today in the German speaking countries is a result of the survival of the order. Again, want of

time forbids even the most cursory survey of the standing and achievements of the legal profession in Sweden, Austria, and the countries forming the German empire.

Milton tells us that in his time the Muscovites had no lawyers but every man pleaded his own cause, and yet that justice was much perverted by corruption. Such system, but little improved, has borne practical fruit in the Russian nihilists of today.

In no country has the legal profession achieved a prouder position than in France under her kings. In speaking of the French bar it has been eloquently said that, "beside her mailed chivalry stood an order of men known as the nobility of the robe, whose only patent of nobility was admission to the roll of advocates, and from whose ranks were taken the magistrates who, as members of the Parliament of Paris, represented the feudal court and council of the ancient kings."

Even in times of tyranny, licentiousness and vice the French courts generally administered justice with an even hand and the French advocates discharged their duties to their clients with manly courage and fidelity. In the long struggle which France waged against the encroachments and pretensions of the papacy, the French lawyers stood nobly by their country and by their learning, eloquence and courage vindicated her rights and successfully defended them against the papal power. Only after thorough examination was the candidate for admission admitted to take the oath of advocacy, and the court was forbidden to administer the oath until it was satisfied by an examination that the candidate was competent and qualified to discharge the duties of the office. After the candidate was permitted to take this oath he was then required to spend several years in study and attendance upon court before he became entitled to the right to have his name enrolled as an advocate. At last when fully admitted, the French advocate became subject to the rules and discipline of the profession. Mr. Forsyth, from an old French work written in 1360, has

translated the prohibitions designed to regulate the conduct of a French advocate in those days. Among the most interesting of these prohibitions are the following :—

1. He was not to undertake just and unjust causes alike without distinction, nor maintain such as he undertook, with trickery, fallacies and misquotations of authors.

2. He was not in his pleadings to indulge in abuse of the opposite party or his counsel.

3. He was not to compromise the interests of his clients, by absence from court when the cause in which he was retained was called on.

4. He was not to violate the respect due the court, by either improper expressions or unbecoming gestures.

5. He was not to exhibit a sordid avidity of gain by putting too high a price upon his services.

6. He was not to make any bargain with his client for a share in the fruits of the judgment he might recover.

7. He was not to lead a dissipated life, or one contrary to the modesty and gravity of his calling.

8. He was not, under pain of being disbarred, to refuse his services to the indigent and oppressed.

During the French revolution the order of advocates in name was abolished, but under Napoleon I. it was restored; and from that time to this it has been one of the most important agents in the administration of justice in France. Under the present French Republic it has, without doubt, entered upon a new era of usefulness and power. Probably no bar of modern times has ever surpassed the French bar in the highest achievements of forensic eloquence.

The English bar dates its origin from the time of William Rufus. Those who were present when our first president delivered his annual address, will recall with pleasure his charming and eloquent description of the rise and growth of the common lawyers, sergeants, barristers and students into a

powerful and privileged body, and the origin of their great seats of learning, the inns of court, their manner of life, and the changes which modern innovation has made in the ranking of the members of the English bar. It would be a useless repetition at this time to attempt to restate the facts which he then so vividly portrayed.

Lawyers have been the subject of a good deal of clever wit and caricature at the hands of English wits and authors, as all well know who are familiar with English literature.

All have read of those most interesting inns of court, the middle and inner temple. The gate of the middle temple was adorned with a lamb bearing the banner of innocence and the red cross, which was the original badge of the Templars, the occupants of the place before it came into the possession of the lawyers. On the gate of the inner temple was a shield originally bearing a horse with two men upon it, the two men on one horse indicating the poverty of the Templars. In the course of time the men became worn from the shield, and when it was restored were taken for wings, and the horse was transformed into a winged horse. These emblems occasioned a wit to write here:—

As by the Templars' hold you go,
The horse and lamb display'd
In emblematic figures show
The merits of their trade.

The clients may infer from thence
How just is their profession;
The lamb sets forth their innocence,
The horse their expedition.

Oh! happy Britons, happy isle!
Let foreign nations say,
Where you get justice without guile,
And law without delay.

Soon under this from another witty hand appeared the inscription:—

Deluded men, these holds forego,
 Nor trust such cunning elves;
 These artful emblems tend to show
 The *clients* — not *themselves*.

'Tis all a trick; these all are shams
 By which they mean to cheat you:
 But have a care — for *you're* the *lambs*,
 And they the *wolves* that eat you.

Nor let the thought of "no delay"
 To these their courts misguide you:
 'Tis *you're* the showy horse, and they
 The *jockeys* that will ride you.

This desire to say a good thing at the expense of the lawyers sometimes appears even in their epitaphs. Of Sir John Strange, Pennant gives the punning epitaph: "Here lies an honest lawyer, that is — Strange."

At a very early day, the lawyers seem to have been unpopular with those who made a living by stirring up riots, and who preached doctrines very much like those advocated by some of the most radical communists of today. They were chosen as the first victims in Jack Cade's rebellion. Shakespeare refers to this in his Henry VI. In the conversation between Cade and Dick the butcher, after the former had been saluted as king: —

Cade. I thank you, good people:—there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers, and worship me their lord.

Dick. The first thing we do, let's kill all the lawyers.

Cade. Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? that parchment being scribbled o'er, should undo a man? Some say, the bee stings: but I say, 'tis the bee's wax; for I did but seal once to a thing, and I was never mine own man since.

Further on Cade is made to say, "Now go some and pull down the Savoy; others to the inns of the court; down with them all."

Very little if any harm was done the lawyers by Jack Cade, but their houses were destroyed and their books burned in the invasion of London by Wat Tyler during his rebellion.

During the reign of bloody Mary, it is said that some of the young lawyers had become such notorious fops that it was necessary to pass an act of parliament to regulate their conduct. It was enacted that "they were not to wear beards of more than three weeks' growth upon pain of a fine of forty shillings, and that they must restrain their passion for Spanish cloaks, swords, bucklers, rapiers, gowns, hats, or daggers at their girdles." Laws of this kind soon fell into disuse, and from time immemorial the members of the inns of court have themselves prescribed the rules regulating their professional conduct.

As a rule, there has been no more honorable, upright and independent body of men in England than the English bar. It can look back with pride upon its history in the development of the English law and its administration, so as to protect and secure the rights of the individual. Not until the barbarous law, by which a respondent charged with a felony was deprived of the right to be heard by counsel when put upon trial, was abolished, did the criminal trials for offences punishable by death, and especially in cases of high treason, become little else than judicial murders.

In cases not involving political issues, it is safe to say that there is no country in which a fairer trial can be had than in England, and this fact is due to the learning and the courage of the English bar more than to any other cause. It is true that there have been men in its ranks who have been ready to sacrifice their principles for the rewards offered by royalty and despotism; but the great majority of the profession have always insisted upon the administration of justice according to the established laws of the land.

No one who has read Macaulay's magnificent description of the defense of the seven bishops can fail to realize that the

counsel for the defendants in that case then and there demonstrated and forever established the right of the subject to petition the king. The learning and the eloquence of Erskine established the liberty of the press in England, and led to the overthrow of the monstrous doctrine that in criminal prosecutions for libel the only question upon which the jury were to pass was that of publication. He was not deterred by the displeasure of the king and the Prince of Wales, nor the solicitations of his friends, nor public clamor, from defending Thomas Paine when prosecuted for publishing the second part of his "Rights of Man." Although disapproving Paine's opinions, Erskine took the strong ground that "a writer is at liberty to address the reason of a nation upon the constitution and government, and is criminal only if he seeks to excite them to disobey the law or calumniates living magistrates"; in short, he insisted "that opinion is free and that conduct alone is amenable to the law." He successfully defended Thomas Hardy and John Horne Tooke from the charge of constructive treason, and in a speech which will live forever vindicated the right of free discussion and association for the purpose of peaceably securing needed reforms. It is impossible to fittingly describe the interest which centered in these great trials, or the public ovation which Erskine received on the acquittal of his clients.

No mention need here be made of Romilly, whose name is synonymous with legal reform, nor of the other brilliant names which have adorned the English bar, for to the lawyer of this country they are as household words. The great law reforms which have been made in England during the last thirty or forty years have been brought about very largely by the efforts of the legal profession.

Although the Puritans held lawyers in light esteem, and although in 1660 the convention of colonial landholders in Virginia voted "the total ejection of mercenary attorneys" from that province, yet the legal profession came to and

developed in the American colonies like many other of the institutions which the colonists received from England. At the time of the revolution, the bar of the colonies had come to occupy a position very nearly like that of the mother country, modified, of course, by its surroundings and the spirit of the people and the institutions of the colonies. Its influence as a class had been in favor of religion and sound morals and the advancement of civil and religious liberty. In the troubles between the colonies and Great Britain, which finally culminated in the American Revolution, the leading lawyers of the colonies were heartily in sympathy with their countrymen and ably aided them in their resistance to oppressive measures, and when the appeal to arms came, they cast in their lot with their country. What lawyer without pride in his profession can think of that famous hearing in February, 1761, before Chief Justice Hutchinson and his four associates, in the council chamber of the old Town House in Boston, when the question was argued whether "writs of assistance" should be issued to aid the officers of the customs in their enforcement of the obnoxious acts of trade? Thacher, the wise and learned counselor, speaks first against the granting of the writs, calmly showing that the rule of the English courts is not applicable to the case at bar. He is followed by James Otis, who, "disdaining fees or reward, stood up amid the crowd, the champion of the colonies, and the prophet of their greatness." Said he, "I am determined to sacrifice estate, ease, health, applause, and even life, to the sacred calls of my country, in opposition to a kind of power, the exercise of which cost one king of England his head and another his throne." After describing the nature of these writs, and showing how without the ordinary safeguards of the law they enabled officers to search every man's house, which the law had made his castle, he exclaimed, "these writs are the worst instruments of arbitrary power, the most destructive of English liberty and the fundamental principles of law. * * * No act of parliament can establish such a writ. * * * An act

of parliament against the constitution is void." Says Bancroft: "Thus did Otis lay the foundation for independence. His words were as a penetrating fire, kindling the souls of his hearers. The majority of the judges were awe-struck, and believed him in the right. Hutchinson cowered before him as the 'great incendiary' of New England. The crowded audience seemed ready to take up arms against the arbitrary enforcements of the restrictive system; especially the youngest barrister in the colony, the choleric John Adams, a stubborn and honest lover of his country,—extensively learned and a bold thinker,—listened in rapt admiration, and caught the inspiration which was to call forth his own heroic opposition to British authority. From that time he declares that he could never read the acts of trade without anger, nor any section of them without a curse."

Every one must regret that this memorable speech of Otis was not preserved in full. It is said that "forensic eloquence was almost unknown in England until the latter part of the eighteenth century." In this country it certainly had its birth with the revolution, if not before.

In 1762 the governor of New York complained to the board of trade that "three popular lawyers educated in Connecticut" were "propagating the doctrine, that all authority is derived from the people." Names of eminent lawyers like Otis, Adams, Jefferson, Madison, Patrick Henry and Hamilton naturally occur to us in connection with their services during the Revolution and in the formation and adoption of the constitution of the United States. The services performed by Hamilton in writing his articles in *The Federalist* in favor of the adoption of the constitution, are alone sufficient to entitle him to the lasting gratitude of his country.

From the adoption of the constitution to the present time, no country has afforded greater opportunities to the legal profession than this. The constitutional questions which arose and could only be determined by the supreme court, called for

the exercise of the highest professional and judicial learning and ability. Both the bar and the bench were found well equipped for the wise solution of these questions, and so performed their difficult work that our constitutional law was established on abiding foundations, grounded on sound reason and the confidence of the people. It has been well said that the nation owes a debt of gratitude to the memory of John Marshall for giving the elements of life and perpetual vigor to "the union of these states, hardly second to that which is due to Washington for having achieved its independence." In performing that service, no one but a lawyer can fully appreciate how much he was aided by the efforts of such men as Webster and Pinckney.

Think of what Judge Story did for the law in this country. When he came to the bench of the United States supreme court, admiralty and prize law had received but little attention in this country or England. A few of its principles had been adjudicated in American courts, "but as a system they had neither fullness nor precision." While Sir William Scott was engaged in England in bringing it into a system, Story, almost alone and unaided, was performing a like service for this country. To the united labors and efforts of Story and Kent, it is said that "the American system of equity jurisprudence and practice, now so fair and complete in its proportions, is mainly due. They were in some respects its creators." One thinks with astonishment of the immense labors performed by Story as a lawyer, a judge, an author and a teacher of jurisprudence. Writing of him, his former pupil and friend, the late Charles Sumner, says: "The bare amount of his written and printed works is enormous and beyond precedent in the annals of the common law. His written judgments on his circuits and his various commentaries occupy twenty-seven volumes, while his judgments in the United States supreme court form an important part of no less than thirty-four volumes more. The vast professional labors of Coke and Eldon, which seem to clothe the

walls of our libraries, must yield to his in extent. He is the Lope de Vega, or the Walter Scott, of the common law."

We must forego the pleasure of speaking in this connection of the achievements of lawyers, both in legal and general literature.

Mr. Bryce, in his "The American Commonwealth," pays the bar of America a high compliment, especially for an Englishman, when he says: "The better lawyers of the United States do not sink their professional sentiment and opinion in their party sympathies. They know good law, even when it goes against themselves, and privately condemn as bad law a decision none the less because it benefits their party or their client."

It may be interesting to recall the fact that during the hard times through which this state passed in 1786, various remedies to relieve the distress of the people were proposed. "One cried, 'A tender act;' another, 'a bank of money'; a third, 'kill the lawyers.'" The courts were set upon at Windsor and Rutland by mobs and disturbed or broken up. Doggerel poems appeared in the newspapers, the strain of which was that "attorneys ought to be expelled from the courts and debts cancelled." One of these poems ran thus:

Whereas the Assembly of the State
Have dar'd audaciously of late,
With purpose vile, the Constitution
To break or make a wicked use on,
By making laws and raising taxes,
And viler still (so truth of fact is)
By keeping up that smooth-tong'd clan,
For ages curs'd by God and man,
Attorneys, whose eternal gabble
Confounds the unexperienced rabble.

* * * * *
These lawyers from the courts expel,
Cancel our debts and all is well—
But should they finally neglect
To take the measures we direct,
Still fond of their own power and wisdom,
W'll find effectual means to twist 'em.

Similar riotous scenes were enacted in New Hampshire and Massachusetts about the same time. In the latter state the multitude included in their condemnation merchants as well as lawyers.

An interesting account of these troubles is given in volume one of McMaster's History of the People of the United States.

This sudden madness of the times soon passed away, and from that time to the present such heroic measures to relieve the real or imagined necessities of the people have never been seriously suggested or attempted.

The bar of this state has ever been loyal to its interests, and has no occasion to be ashamed of the integrity and ability of its members as a whole.

It would be interesting to recall and linger over the names of the great debaters and orators, whose names and fame adorn the annals of the American bar and places it in the front rank of forensic oratory. We should recall the brave, impetuous Patrick Henry; Webster, with "his presiding brow, his large, unearthly eyes," and his majestic thoughts clothed in fitting diction; Calhoun, "the iron man, that looked as though he never was born"; Henry Clay, whose magic eloquence convinced, charmed and subdued; the accomplished and brilliant Pinckney; Rufus Choate, aptly styled the genius of the bar; and others too numerous to mention, who have "passed over to the great majority." Yet before we hasten on we ought to mention John Randolph, that singular as well as illustrious lawyer and statesman. His voice was of thrilling, silvery tones when he chose to make it so, yet often the reverse when he wished to express irony or contempt. It is said that "his ridicule was terrible, his wit flashing and bright, but it was always infused with so much bitterness that it was equally dreaded and admired. As Byron said of Conrad —

'There was a laughing devil in his sneer
That raised emotions both of mirth and fear.'

When Thomas H. Benton was asked if Randolph was not "a sort of legislative comet, frightening his fellow members, shaking pestilence and war," his reply was, "No: he is a planetary plague, shooting down agony and fears on the members." Webster was once asked, "whether Randolph was an aristocrat or a Jacobin," and replied, "he is neither; he is an Ishmaelite. Every one's hand is against him — or would be, were it not for fear of him — and his hand is against every one."

The bar of this country has constantly sought to improve the moral, intellectual and professional standing of its members. State bar associations have been formed, and through them unworthy members in many instances have been weeded out. More thorough inquiry is made in regard to the character of the applicant for admission, and he must possess higher qualifications and undergo a more rigid examination in very many of the states than was formerly required.

There seems to be no doubt but that there is today a stronger professional interest in the law and its study in this country than in England. In regard to this Mr. Bryce says: "Twenty-five years ago, when there was nothing that could be called a scientific school of law in England, the inns of court having practically ceased to teach law, and the universities having allowed their two or three old chairs to fall into neglect and provided scarce any new ones, many American universities possessed well equipped law departments, giving a highly efficient instruction. Even now, when England has bestirred herself to make a more adequate provision for the professional training of both barristers and solicitors, this provision seems insignificant beside that which we find in the United States, where—not to speak of the minor institutions—all the leading universities possess law schools, in each of which every branch of Anglo-American law (i. e. common law and equity as modified by federal and state constitutions and statutes) is taught by a strong staff of able men, sometimes including the most eminent lawyers of the state. Here at least the principle of demand and supply works to perfection."

The trammels and restrictions which made admission to the ranks of the English bar so difficult have been thrown off in this country. Any young man of ability and good character, however humble and poor, may enter our ranks with the right to expect by industry to win its prizes. Thus the legal profession in this country has been kept in close contact and sympathy with the people—indeed, a part of the people—instead of becoming a sort of close corporation as in some other countries.

The day has gone by when, as in the first half-century of the American republic, the lives of a few great men like Washington, Jefferson, Monroe, Webster, Clay and Calhoun are the story of the political progress of the nation. Education is more generally diffused. Men of great wealth are seeking and securing political place and power, and it is to be feared that they too often accomplish this by the corrupt use of money. If it is true, as claimed by some, that lawyers do not now have the hold on politics which they had in the early days of the republic, yet they now have no occasion to say that the people have not been ready to accord to them their share of political honor and power.

One of the political curses of this country is hasty, ill-considered legislation. Many well-meaning persons imagine that change is necessarily reform, when nothing can be farther from the truth than that idea. Hence enactment follows enactment until our statute law becomes "confusion worse confounded." Buckle may not have been far amiss in his idea that mankind have been too much governed, instead of too little. It has certainly been made clear in this country that it has had too much legislation in some directions. The American bar has in many instances successfully exerted its influence to prevent bad legislation, and has ever shown itself ready to forward wise and conservative legal reform.

The unexampled growth of this country in wealth and population, and the complex social and business relations which are the natural results of that growth, have widely extended the

field of labor and usefulness of our profession, and rendered its existence more than ever before necessary for the public welfare.

The protection of the rights of private property, of individual liberty, of the social and domestic relations, of political rights, and of life itself, is the chief aim and end for which our state and national governments exist. In the end, in times of peace, that protection must be had through the judicial tribunals of the land.

Without doubt, future legislation will attempt to regulate and settle perplexing and disturbing questions like "the conflict between labor and capital"; "free elections and an honest count"; the duties of corporations, like railroads and telegraph companies to the public; the taxation of corporations; the prevention of trusts and other combinations to enhance or control the price of the necessities or comforts of life, and the right of congress to pass laws impairing the obligation of contracts; but after legislation has done its best, the final and enforceable decision of any or all of these and like questions must come from the courts, and they, to successfully perform their duty, must be aided by an able, learned, fearless and patriotic bar. Our institutions and the spirit and character of our people are such, that the bench and bar must stand or fall together in the administration of the law of the land. That brilliant and able lawyer, the late Benjamin R. Curtis, well said: "The bench and bar are mutually dependent on each other for that cooperation which is essential to the steady, prompt and successful distribution of justice. Without the support of an able, learned and industrious bar, it is not too much to say that no bench in this country can sustain itself, and its most strenuous exertions can result only in a halting and uncertain course of justice. Without a learned, patient, just and courageous bench, there will not, for any long time, continue to be a bar fitted for its high and difficult duties."

The most vigorous brain work of the world has been and must still be done by our profession. Sooner or later every

A MEMORIAL SKETCH
OF
LUKE POTTER POLAND.

READ BEFORE THE VERMONT BAR ASSOCIATION, OCT. 21, 1890.

BY HON. JONATHAN ROSS.

Mr. President and Gentlemen of the Association:

It is fitting that a tribute of respect should be paid by this Association to the memory of the late LUKE POTTER POLAND. He was one of its founders, its president, and an active, influential member so long as he lived. He is also peculiarly a child of the bar and bench of Vermont. I regret that it has not fallen to abler hands to prepare and lay this tribute upon his altar. Others have declined. He was my friend. I commenced the practice of the law under him as a judge. He kindly loaned me the use of his law library when I first commenced practice, and continued it beyond his judicial life. Thus I was brought into frequent association with him. When others declined, I could not well refuse your invitation. He has departed. Memory of him,—of what he was, did, and accomplished,—alone remains. It will be my purpose to present him to you as he survives in my recollection, and to point out as well as I may wherein lay his great strength and from what sources it was derived.

He was born in Westford, Vermont, November 1, 1815. His ancestors occupied the humbler callings in life, but were of the best Anglo-American stock. His grandfather, Joseph Poland,



Luke P. Poland

was a carpenter and joiner, and also worked at cabinet making. He was born in Ipswich, and when about twenty-five years old moved to North Brookfield, Mass. He was the father of seven children, and died at the age of ninety. Luther, his second son, was born in March, 1790. He married Nancy Potter in 1812. Two years later he moved to Underhill, Vt. He followed the paternal occupation, adding thereto farming and running a saw mill. He resided also in Westford and Coit's Gore, now Waterville. He was an unassuming, worthy, christian man, for many years a deacon in the Congregational church. He also lived to the advanced age of ninety-one. He died in Montpelier in June, 1880. Our deceased brother was his eldest son. His early advantages were very limited. His father was in humble circumstances, and could render him little aid beyond bringing him up to habits of industry, perseverance, faithfulness and honesty. He was allowed to attend the district school until he was twelve years old. Then for two years he was in a country store, and gained such knowledge of business as that calling would be likely to furnish a boy of his age, capacity and advantages. The next three years were spent at home, helping his father at his trade, on the farm, and in running an upright saw mill. I never heard him more than allude to his school life, but have heard him say, "I was brought up and educated in a saw mill." Having exchanged boards from the saw mill for necessary clothing, at the age of seventeen he attended the academy at Jericho for five months. This ended his school days. I am told by one who knew him while at this school that he had not mingled much with others, was bashful and retiring, but characterized by good sense and industry. Hopes had been awakened that he might do better than to pursue the paternal calling. He persuaded his father to give him the remainder of his minority. With a single change of clothing—his entire worldly possessions—he went on foot to Morrisville, where he taught the village winter school so successfully that he was engaged to keep it the following winter. That he could teach

successfully is good evidence that he had made the most of his limited school advantages. He was physically as well as intellectually strong, excelled in athletic sports, and was an expert ball player.

At the close of his first school he commenced the study of the law in the office of Judge Samuel A. Willard at Morrisville. Here the education for his life work commenced. The most that he had acquired hitherto was a knowledge of the rudiments and of the fact that he was to be the sole architect of his fortune. He was not to be led or coaxed along by wealthy, influential friends, nor helped, and his tasks made simple and easy by eminent paid instructors. He was to hew his way to fortune by his own right hand, and by his own active brain, or fail. *He* was to reach forth and take from any source, but not be helped to those things which make for success. First of all, *he* was to master and subject to severe discipline all his powers, physical and intellectual, that they might respond when and as he called. We make a serious mistake when we think that schools and eminent instructors are indispensable to a thorough education, to the careful training, marshalling and disciplining of the mental faculties. "There is no royal road to learning." The vital seed germ of an education springs not from without but from within the man himself. Above all, he must have a brain, intellectual faculties; then if he have the will power to seize every opportunity, lay hold of every advantage, and bring them into subjection, he will not be long in demonstrating that he is an intellectual foeman worthy of the best and most cultivated antagonist. I think that it is clearly demonstrable that the spirit of some of the wealthy of this age, who worry themselves out of life that they may accumulate property, and furnish books and teachers, to provide for and help their children over all the hard places in life produces only a race of physical and intellectual dwarfs. The strong man, like the giants of the forest, flourishes and strikes deeper and wider his roots into the soil of life, when shaken by violent winds and beaten by

rough storms. Our brother was not injured by any soft, sentimental treatment, nor by being thrown entirely upon his own resources to fight his way in life. He set about the study of the law with no other purpose than to master and use it. So well did he acquit himself as a student, that, before admission to the bar, Judge Willard sent him to Greensboro to open an office and attend to urgent business there. He was admitted to the bar at the December term of Lamoille county court, 1836, the first term after the organization of the county, and shortly after attaining his majority. At once he became the partner of Judge Willard. This partnership continued three years. Then for nine years he was in practice alone. With a family, and no property except what he earned, he became an intense worker. He soon obtained a large practice, mostly in Lamoille, Orleans and Washington counties. From necessity, as he often said, he was driven to despatch business, to master principles and cases, to comprehend and marshal facts with the greatest rapidity—a rapidity which often rendered him a marvel in the eyes of his more favored but less driven compeers. The habits thus early formed followed him through life. He was greatly aided, not only in understanding the facts of his cases and the application of the principles of law to them, but in presenting them to the easy comprehension of the judge and jury, by his practical knowledge of the common affairs of life. He was careful in preparing and skillful in managing his cases. If a new fact or point of law was suddenly sprung upon him, he never manifested surprise, either to the court, jury, or the opposing counsel. Brought to contend against able, sharp, quickly discerning opponents, he soon learned that to win he must have command both of the facts and law of his case, and above all, of himself. Little taught in the ordinary schools, all his powers were brought under subjection and thorough discipline in that sharpest as well as most broadening of all the schools of life—the practice of the law in the country. To win there, one must meet all classes of men; meet and investigate

all classes of facts, principles, rights and duties, and handle and elucidate them to the understanding of the common juror as well as of the learned court. Endowed with great native abilities and an indomitable will, it is not wonderful that, after attending such a school for twelve years, he should be elected a judge of the supreme court by a whig legislature over a whig competitor, although not quite thirty-three years old and a free soil democrat; nor that such election should yearly be continued for seventeen successive years. The first two and last eight years he was judge of the supreme court, and the other seven years of the fourth judicial circuit. By this election he was brought into close association and comparison with those strong judicial lights of the state, the elder Chief Justice Royce, Isaac F. Redfield, Milo L. Bennett, Daniel Kellogg and Hiland Hall. Youthful and untaught as he was in the schools, he did not suffer by the comparison. The forty-two opinions prepared in his first two years of judicial service, contained in volumes 21 and 22 of our reports, show that thus early he was a strong, clear, cogent reasoner, well grounded in the principles of law and equity, apt and discriminating in applying them, and able to state his views so as to bring them within the ready comprehension of all. By a change in the judiciary system, for the next seven years, as judge of the fourth judicial circuit, he was engaged mostly in *nisi prius* trials. It was in this capacity that I first came to know him. As a presiding judge he was dignified and courtly, quickly comprehending the issues involved, readily catching the drift and tendency of the testimony offered, sharply distinguishing the admissible from the inadmissible, and clear and pointed in charging the jury. Order and vigorous, continuous work were sharply enforced. No time was wasted in waiting for parties or witnesses. Everything must be in readiness and the trial proceed with despatch. Without the aid of a reporter he took full minutes of the material parts of the testimony of every witness, but never allowed the examination stayed to enable him or the counsel to accomplish this. In

despatching the business of a term he had few equals and no superiors. He was eminent as a trier of fact, and this characteristic greatly aided him in presiding over such trials. On return to the former judiciary system in 1857, he was elected second assistant, and two years later chief justice of the supreme court, which last position he held to the close of his judicial service. During these years the characteristics already noticed became more pronounced and manifest. In the nearly two hundred opinions prepared by him during this period, covering a great variety of rights, duties and principles of law and equity, he stands forth, a judge of excellent judicial discrimination, clearly distinguishing and pointing out, when a given principle of law or equity is applicable and when inapplicable. Some are models in clearness and aptness of expression, and application of the principles under consideration. If a conclusion was reached at the consultation, most of his opinions were prepared and delivered at the close of the term at which the cases were heard. If no such conclusion was reached, he took the case home, and prepared his opinion after an examination of the authorities and a careful consideration of the points involved. His views, thus prepared, were generally accepted by his associates. His opinion in *Fullam v. Adams*, 37 Vt. 391, on the subject, when the promise to pay the debt of another must be reduced to writing to avoid the statute of frauds, and when it may be considered an original promise,—then involved in much doubt, through apparently conflicting decisions, both in this country and in England,—was soon recognized as an able judicial elucidation of the true principle running through and governing the apparently conflicting decisions, and as a leading opinion on the subject. Many of his other opinions are equally luminous and discriminating. He was independent in his decisions, both of law and of fact. He mingled freely with the bar; more intimately with some than with others. This gave rise to the thought, by some, that he had favorites. But in the trial of cases, whether of law or

of fact, I could never discover that his decisions were influenced by the fact that one side was conducted by a supposed favorite, and the other by an attorney not regarded as such. He carried himself with great evenness and impartiality, and with great kindness and forbearance toward an honest but inexperienced attorney. Such he was ever ready to aid by suggestion, or reference to a controlling case.

Few could accomplish so much in any direction in the same time. I remember, upon the assassination of President Lincoln, our people prepared to join in the national mourning. The clergy thought that a civilian ought to prepare and deliver the address. Judge Poland was selected, but absent, and returned only a day before the time appointed for the service; yet, in this brief period, he prepared and delivered an able written address.

Now, on looking backward, his education and life work thus far appear to me to have been preparatory for his services in congress. In the study, practice and execution of the laws he had inhaled the fundamental principles of our system of government. He had observed that obedience to law is the bed rock of its security; that this obedience is secured only by a keen realization of the obligation, and the sacred observance of the oath by the citizen in whatever capacity he acts; that, bound by its sacred obligation, the citizen secures to all certain inviolable rights in written constitutions, state and national; that he selects representatives to the state and national legislatures, and officers to execute the commands of the law; that these representatives, by a like obligation, are bound to enact only laws which are not inhibited, and are for the general good; and that, held by the same sacred obligation, the expounders and officers of the law discharge their duties. To him the oath was no ceremony of words, without meaning or obligation. It can never become such to the conscientious lawyer and judge. Hence from their life work they become the most careful and safest congressmen and state legislators. They come fully to

understand, as no other class of citizens do, that only in a conscientious observance of the oath is there safety and peace; that its disregard unsettles and endangers the fundamental principles of our form of government. Thus trained and equipped, at the close of the war, upon the sudden death of Judge Collamer, he was appointed to the senate of the United States. He was now fifty years old, in the prime of mature manhood. The following ten years he was a member of congress: the first two, a senator, and the remaining eight, a member of the house of representatives.

In early manhood he had been a democrat; then a free soil democrat and its candidate for lieutenant-governor. While in service as a judge—as has been the universal custom in this state—he refrained from taking any active part in politics; but he became a republican when that party was organized, and ever adhered firmly to its principles. After his appointment to the senate, he was ever a judicial statesman rather than a politician, except in the better sense. He often said that he thought his political friends were the best men to manage the national affairs, but he could never be brought to support a measure that had no other merit than that it was a measure of the party. All through his congressional career, he steadfastly opposed every partizan measure which he thought did not accord with the letter and spirit of his oath of office. Entering congress at the close of the war, and remaining during the term of President Johnson and the reconstruction period, there was urgent need of men of his conservative character, who regard measures and principles, as tested by the form and spirit of our government, and by the oath of office, rather than by whether they are proposed by the party and beneficial in their view alone. During the existence of the rebellion, many questionable acts had been justified as war measures, which recognize the law of necessity as the highest of all laws—higher than the constitution even. This spirit prevailed to a considerable extent when he entered the senate. His first speech there of importance was

in opposition to the amendment to the post-office appropriation bill prepared by Mr. Trumbull, providing that appointees by the president, made when congress was not in session, to vacancies created by removals for political reasons, if they failed to be confirmed, should receive no pay for the time they discharged the duties of the office. The amendment impliedly recognized the right of the president to make the removals, and to fill the vacancies thereby created, subject to confirmation by the senate when again in session. In a forcible speech, he maintained that to refuse to pay for such services the compensation fixed by law was revolutionary, and that his oath of office would not allow him to support the amendment. The speech was commented upon in the public prints as that of a statesman rather than a politician. Again, while in the senate, he supported the right of Mr. Stockton, a democrat, to a seat, against the report of the committee, and the leading members of his party, because, in his view, the facts clearly showed that he had been legally elected. In the house, in the fortieth congress, he was a member of the committee on elections. Many contested elections came before the committee, largely from states recently in rebellion. An inclination existed, on the part of some of the committee, to seat only republicans; but he was guided by the facts and law applicable in each case. He manifested the same judicial fairness in finding and reporting the facts, and in applying the law, which had always characterized him as a judge, though it often brought him into conflict with his political associates. He would not act upon a case until he had made himself familiar with its facts. However otherwise engaged, he always discharged promptly every present duty. His willingness to work, his ability to despatch business, and his eminent judicial fairness were soon recognized by both political parties, and he was called to fill places in which these qualities were especially required. When the Ku Klux Klan outrages in the Southern States were to be investigated by a joint committee of the senate and house, he was appointed chairman of the house

committee. Although otherwise especially busy on important committees, he helped to push the lengthy investigation to a close. His speech on the report was able and influential. The investigation, report, and prosecutions which followed caused the disbanding of the lawless companies and a cessation of the outrages. But the greatest recognition of his ability and fairness, entertained by both political parties, was his appointment as chairman of the committee to investigate the Credit Mobilier charges. Immediately upon the assembling of the second session of the forty-second congress, in December, 1872, Mr. Blaine, then speaker of the house, calling Mr. Cox of New York, a leading democrat, to the chair, rose to a question of privilege and stated, that in the presidential campaign, then just closed, the democrats, in public speeches and prints, had charged that he and other prominent republicans, including the then vice-president, Colfax, and vice-president elect, Wilson, the secretary of the treasury, several senators, and a large number of representatives had, during 1867 and 1868, been bribed by Oakes Ames, a republican member from Massachusetts, by gifts or sales, at less than their value, of shares of the stock of a corporation known as the Credit Mobilier, to influence their legislative action for the benefit of the Union Pacific railroad company; and moved that a committee, a majority of whom should be democrats, be appointed by the temporary chairman to investigate the charges. Mr. Cox at once appointed Judge Poland chairman of the committee, with Mr. McCrearey, republican, and Messrs. Banks, Niblack and Merrick, democrats, associates. The public prints at once charged that it was a whitewashing committee. The committee promptly commenced the investigation, and pursued it with the vigor ever characteristic of Judge Poland. His was a delicate, arduous position. A majority of the committee were democrats. Most of the persons charged were his political associates, and many of them held high positions in the party and government. Some of them were in the senate. Over these the committee had no jurisdiction; but the testimony

to be taken would necessarily disclose their connection, if any, with the charges. Having patiently and carefully examined and sifted the entire testimony, to the surprise of many the report of the committee was unanimous. It was drawn by Judge Poland in his clear, careful, impartial way of putting things. In it the judge and statesman rise high above the mere politician. As he once informed me, after hearing testimony until late in the evening, immediately upon adjournment, those implicated would come to his room, or send some friend, and use most of the remainder of the night in endeavoring to explain away the force of the incriminating testimony. But all to no purpose. He would tell the exact truth, let it fall where it would. Of their report it has been well said: "There has not been a state paper submitted for many years, upon a similar subject, that carried with it greater weight, or which bore upon its face a fuller realization of the grave responsibilities assumed; and it is the first time in the political history of the United States that an all important investigation has been entrusted by the dominant party to a majority of its political foes." The report will bear the careful study of every one, especially of those who are, or who expect to become, members of congress, for its high and impartial tone, and for refusal to attempt to cover or conceal the wrongs of any one. The testimony involving members of the senate was transmitted to that body. The report sustained the charges against Mr. Ames and Mr. James Brooks, a government director of the Union Pacific railroad. The committee recommended the expulsion of these members from the house. They made a desperate effort to escape the withering effects of the report. Mr. Ames was a man of large wealth. He also had much influence in business circles, and Mr. Brooks, in the newspaper world. Mr. Ames had acted, in some of the transactions, under the advice of Benjamin F. Butler, then chairman of the judiciary committee of the house. He naturally championed Mr. Ames' cause, and endeavored to forefend him against the report and resolutions by a report from the judiciary committee.

made a few days in advance, claiming that, inasmuch as the offences found, if offences they were, were committed long before the election of Messrs. Ames and Brooks to the then congress, the house had no right nor jurisdiction to deal with the gentlemen. The affrontery of this report lay in the fact that nothing on the subject had been referred to the judiciary committee. The want of jurisdiction was earnestly pressed upon the house by Mr. Butler and the other friends of Messrs. Ames and Brooks. Judge Poland combated it in his report, and in a very earnest, cogent, able speech. After much discussion the house took jurisdiction, but modified the propositions of the committee, and subjected Messrs. Ames and Brooks to the "absolute condemnation of the house." Both members died within three months thereafter; and several others, theretofore ranking high in the party, were relegated to private life.

Again in the forty-third congress he was appointed chairman of the committee to investigate the state of affairs in Arkansas. From the report of the committee, it appears that a governor had been fraudulently counted in; had been peaceably installed in office for a term of years; that during his term a constitutional convention had been irregularly called, and prepared a new constitution, which was submitted to and adopted by the people. This constitution provided for an election and inauguration of a governor and other state officers before the expiration of the term of the existing officers. An election had been held under the new constitution, and the new governor and other state officers had been duly and peaceably installed in office. There had been and existed no insurrection, or forcible resistance to the induction of the new state officers under the new constitution. The new constitution was republican, and unobjectionable in form and spirit. Under it a United States senator had been elected, and had entered upon the discharge of his official duties. But it had become of pecuniary interest and advantage to certain prominent state republicans to have the state government overturned from the fraudulent counting in of the governor first

named. They had secured the ear of President Grant, and of many influential members of congress of the republican party. After the investigation was closed, it came to be rumored that Judge Poland thought that the national government had no occasion or right to interfere, but that some of the committee were favorable to the wishes of the promoters of the scheme. There existed much excitement and not a little anxiety in regard to Judge Poland's position on the question. In this condition of affairs a certain man, well known to Judge Poland, not a member of congress, approached him with a note for twenty thousand dollars, signed by the parties most desirous for the overturn, payable to the Judge when he should make a report favorable to their wishes. He gravely inquired of the person, if the signers were pecuniarily responsible, and if the note would be promptly paid at the time mentioned. Receiving strongly affirmative answers, Judge Poland, in language more forcible and expressive than polite, informed the gentleman that it would be a long time before the note would mature, and turned from him with indignation. He prepared and submitted a majority report against interference. A minority report the other way was secured. The matter came up for consideration near the close of the session. An attempt was made to substitute the minority for the majority report and adopt it. With the president in favor of the minority report, it was doubtful which party would prevail. Judge Poland supported his report in a strong, sensible, very able, incisive speech, contending that, on the uncontroverted facts, no right of interference existed; that although fraud and irregularities had intervened, all was peaceable and no insurrection had occurred or existed; that the new constitution was republican in form and spirit, had been adopted by the people, and under it state officers peaceably elected and installed in office; and that he, under his oath to support the constitution, could not vote for interference. It has been said by those well informed that his speech changed seventy votes in the house. His report was sustained by a large majority. Because of the

forces arrayed against him, the result was highly gratifying. He also took an active part in and promoted many other measures, though not strictly of a political character. While in the senate he was largely influential in procuring the passage of the bankrupt act, on which the judiciary committee,—of which he was a member and had charge of the bill,—were nearly equally divided. He was active and influential in procuring proposals of amendments to the constitution, in procuring measures for the reconstruction of the states lately in rebellion, and in the matter of the impeachment of President Johnson. He made an able speech in favor of distributing that portion of the Geneva award, received for ships destroyed, to the insurance companies which had paid the owners for the losses which they had sustained.

But the great work of his congressional life was the procurement of the revision of the statutes of the United States. When he entered congress they had never been consolidated, classified or revised. Unauthorized compilations had been made. For nearly a century the acts of congress had accumulated. Each congress had added to, modified, enlarged and repealed the statute laws, directly or by implication. From the difficulty in procuring the passage of necessary acts independently, through the check interposed by the rules of the house and senate, and added to by the great multiplicity of bills presented, important legislation had often been enacted as an amendment to an appropriation bill to which it had little relation. Thus it had come to pass that to ascertain authoritatively the existing statute law on almost any subject, one was obliged to look through forty or fifty books, containing the proceedings of as many different congresses, and gather as best he could what law was still unimpaired, what modified and to what extent, and what repealed. The inconvenience of the situation was at once recognized by Judge Poland. When approached, other members conceded the necessity of a revision, but said that it could not be accomplished under existing rules and methods of transacting business; that the sessions were too short and the

task too Herculean. They were mistaken. A Hercules was there to accomplish it. After looking the situation carefully over at his first session in the senate, he drafted and introduced a bill for their revision. It passed without substantial modification, and under its provisions the work of revision was entered upon. A committee on revision of the statutes was raised, and he was appointed its chairman. This position he held in the senate or house until the work was accomplished. The work of bringing together and arranging the different enactments on the various subjects on which congressional statutes had been passed, was entrusted to a commission provided for by the act. The task was full greater than he had apprehended, and some of those appointed commissioners less rapid and effective workers. By his procurement beneficial changes were effected in the composition of the commission. At length the report was obtained. This was to the short session of the forty-third congress. The senate committee on the revision do not appear to have taken any action on this report, but to have waited for the action of the house committee, of which he was chairman. Notwithstanding he received only discouragements, because the members considered the accomplishment of the revision at that session an impossibility, he set about the task fully determined upon its completion. He assigned certain portions of the report to each member of the committee, but took the larger and more difficult part himself. He procured the holding of evening sessions of the house to receive and act upon their report as fast as completed. With the acts of congress overlapping, modifying, adding to and repealing one another, directly and by legal implication, it became often a very delicate and difficult task to ascertain and put in proper legal form the exact existing law on a specific subject; a task demanding the exercise of the keenest judicial discernment and discrimination and the application of the soundest and often most intricate rules of judicial construction, and that, too, upon the mere reading and comparison of the different acts of congress, without suggestion and without

argument. It is true he had able associates on the committee. But as chairman, the final determination of the exact *status* of the law involved in difficulty and doubt generally rested with him. The house uniformly accepted and adopted the recommendations of the committee. At length, so far as pertained to the action of the committee and of the house, the statute laws of the United States took a consolidated, classified and revised form. But it was now near the close of the session when the bill of the house came into the senate. So great was their confidence in the carefulness and accuracy of the work of Judge Poland and his committee, that the committee of the senate, without examination, at once reported it back to the senate for passage. If, as doubtless may have been the case, this action was partly induced by the shortness of the time and the imperative necessity of completing a revision of some kind, it was none the less the highest exhibition of their confidence of the care, faithfulness and ability with which Judge Poland and his committee had done their work. But now a new obstacle was encountered. The rules of the senate required the printing of the bill, containing the entire revision, before action could be taken thereon. But three days and nights remained in which to do this work. Judge Poland went to the public printer, and by earnest solicitation secured the printing of the work in time. The senate then passed the bill, as it had come from the hand of Judge Poland and his committee, by reading the title only. Passed thus hurriedly by the senate, it was feared by some that there might be omissions or errors. Soon afterwards a new commission was raised to revise the revision. I am informed by our careful United States district judge that the new commission had occasion to recommend very few alterations, Judge Poland and his committee had done their work so ably, so carefully and discriminately. From inception to completion the revision is largely the work of Judge Poland. No man, in whose honesty and sound, broad, keenly discriminating judicial judgment the house and senate had not the greatest confidence could have

accomplished the task. To have accomplished it so thoroughly and so efficiently was work enough for one ten years in congress; more, vastly more, than has been accomplished by the ablest and most favored members of either house, as a rule, in this period of service. When to this is added what he did and accomplished as a member of other important committees, and otherwise, our brother stands forth, a son of Vermont, peculiarly a child of its bar and bench, almost wholly educated and trained in that service, whose memory every citizen, and especially every member of this Association should delight to honor and most sacredly cherish.

In accomplishing so much he was greatly aided by his effectiveness as a speaker. His style was not diffuse, nor particularly ornate,—did not abound in quotations, tropes, or figures of speech. His language was simple, clear, direct to the point and forcible. Always neatly dressed, generally in the blue dress coat trimmed with a velvet collar and bright brass buttons, peculiar to himself, his erect stature, good form, hair prematurely white, intellectual forehead, pleasant but piercing black eye, gave added force to his earnest manner and well chosen words. Opposition did not daunt, but only roused him. He could sweep away the mists and rubbish by an apt anecdote, or bit of sarcasm, and bring to the front the real issue in controversy. His manner and style, though pleasing and at times somewhat fascinating, were more—were convincing. His own apprehensions were clear and distinct, and he could express his thoughts clearly, forcibly and convincingly. His language was loaded with well defined ideas. At times he was more than eloquent. By his earnest manner and his apt words, he fastened the very nail of his thought in the memory of the hearer.

But, with his eminent integrity, ability, effectiveness and usefulness, he was not wholly calculated to catch and hold popular party favor. He was too much of a statesman and too little of a politician. Engrossed in the national work, he could

not stop to make mere outside show; to tickle and bombard constituents with printed speeches filled with quotations and generalities, prepared and delivered to empty seats, or printed, on leave, without being delivered. He was too honest, and unyielding to the demands of mere politicians and place hunters. He was too much given to calling a spade a spade, when, for political popularity, silence would have been more golden. His constituents,—to their regret, I think, as they now look backward,—misled and blinded by ignorance and misrepresentation, to their and the nation's loss, filled the place he had so well and usefully held, with other good men. I think he always regretted and thought he made a mistake in leaving the bench for congressional life. Doubtless, if only the enjoyment of living be considered, it was a mistake. But if life be measured by its usefulness, its effective work for the individual and the nation, it was no mistake. The mistake was in not returning and keeping him at the work he performed so well. They did return him to the forty-eighth congress, in which he accomplished much. But he found things so changed,—new members and new associates everywhere, with the chairmanships of all committees in the hands of the opposing political party,—that he did not enjoy it. This ended his congressional life. He was several times an influential member of the national republican convention. In 1878 he was quite prominently suggested as a suitable candidate for the vice presidency. He gave no countenance to the suggestion. He knew too well that, coming from a small, certainly republican state, his nomination would add but little to the certainty of the election of the republican candidates. He brought forward and presented the name of Mr. Wheeler of New York, a state close and somewhat doubtful, but a large factor, necessary to be secured to carry the election. Through his influence and efforts the nomination of Mr. Wheeler was secured.

I hope I shall be excused for occupying so much space in regard to his political and congressional life. I have feared it was never fully appreciated.

To pass rapidly over the remaining portion of his life. All know with what facility and ability during his congressional career he reengaged in and kept up the practice of the profession. He would rarely engage in a jury trial. He confined his practice largely to court and equity cases. We all observed how skillfully he handled, how clearly and cogently he presented the facts and law of his cases; how kind, thoughtful and helpful he was to his younger brethren,—always ready to be conferred with and consulted without charge. Many also know how valuable his suggestions were. The court as well as the bar know how helpful his clear and forcible utterances were, in bringing out the pivotal points of a case and the principles of law or equity controlling their decision. His clients found him a tower of strength into which they could run and find safety. To the oppressed poor his services were ever open at a comparatively nominal price. His political enemies accused him of being niggardly and stingy. Some admit that they lied about him to his hurt, and have the effrontery to boast of it. I have never heard one of his debtors complain that he was oversharpe, hard, or oppressive, while numbers have proclaimed his indulgence and forbearance, often to his own pecuniary harm. In all his dealings he was honest and upright. His word was as good as his bond. I presume that, neither from principle nor inclination, did he like to pay out his earnings to political hangers-on. He commenced life in the sharp school of poverty, where economy, if not a virtue, is an absolute necessity. Hence it came to be true, as he often admitted, that he took greater pleasure in earning and saving than in spending money. I do not claim him to be perfection. He was human, but a large sized human being. We can criticise and find fault. It requires little capital to do that. But could any of us, placed in his circumstances from the beginning, do better or even as well? The things to admire and emulate in him far overbalance those we may justly criticise. He stood among his fellow men like some lofty pine far overtopping the surrounding forest, a beacon

to be observed and admired. We all remember how he went in and out among us; how he went in and out among the members of the legislature the two terms he lately served in the house, how useful, industrious and painstaking he was, and what a controlling influence he there exerted. His life and public services contributed much to give his native state, small in territory and population, the high rank she has gained and maintains.

He was also active in local affairs. He moved to St. Johnsbury in 1850. He was influential in procuring the removal of the county buildings to that place, and was chairman of the committee for their erection. He was an active promoter of the organization of the First National Bank of St. Johnsbury, its president for twenty-two years, and a director to the close of his life. In 1858 the University of Vermont conferred upon him the honorary degree of master of arts, and in 1861, of doctor of laws. He became one of its trustees in 1878, founded in it, in honor of his native town, in 1882, the Westford scholarship, and was active and helpful in its management so long as he lived.

He was an active, influential member of the American Bar Association from its organization, and chairman of its executive committee. In early and middle life he found recreation from the hours of intense work in a simple game of cards or backgammon, and in later life frequently in reading the better class of novels. In the company of his intimate friends his conversation was replete with apt anecdote and story, interspersed with sparkling wit and genial humor. He adhered to the religious faith of his father, was constant in attendance upon the Sabbath services, but never made any public profession of his faith.

But in his home life our brother found and gave the greatest enjoyment. Here he constantly exhibited thoughtfulness, kindness and active affection. His devotion to his grandchildren seemed more than parental. He almost daily sought and enjoyed their presence and entered into their sports and griefs.

They were alike proud and fond of him. He married Martha Smith, daughter of Dr. William Page of Waterville, Vt., January 12, 1838. The fruits of this marriage were a son and two daughters who lived to grow to maturity, and one or more who died in infancy. But sorrow as well as joy came with the family. In the spring of 1853 the mother, after a lingering illness, passed on before. He married her sister, Adelia H., in 1854. He had no children by this marriage. Mary, the eldest daughter, was very bright and attractive, and had many of her father's mental characteristics. When just budding into womanhood, in August, 1865, she went to her mother. The son, Martin I., was educated at West Point Military Academy, served as captain in the ordnance corps, and died at Fort Yuma in August, 1878. The remaining daughter, Isabel, married the late Andrew E. Rankin. This union brought to the common joy of parents and grandparents four children. The eldest, a bright, promising boy, when about four years old, by a severe sickness, to their great grief, became feeble minded. For this unfortunate one, our brother, living and by his will, provided the kindest care and treatment. In 1885 he purchased the old homestead of Dr. Page at Waterville, fitted it up comfortably and conveniently but not ostentatiously, and took up his residence there. I have conjectured that, from his own hitherto firm health and the longevity of his father and grandfather, he counted upon living to be aged, and selected this spot as a quiet, lovely, peaceful retreat in which to pass his remaining days. But intense application had done its work on his naturally vigorous physique. Twice warned by severe sudden attacks, of which he spoke as caused by indigestion but knew to originate in a disease of the heart, he returned from St. Johnsbury to his home June 30, 1887. He was feeling unusually well, and spoke of it. But July 2d he overdid in the forenoon, ate a hearty dinner, and in the afternoon undertook some light work in the hay mow, when instantly he passed apparently in the full vigor of life beyond the river. His sudden death was a shock to his

large circle of friends and acquaintances, save to the few who knew of his infirmity. This was but the beginning of calamities to his family. His highly cultivated and genial son-in-law died January 14, 1888, from pneumonia, complicated by overwork, and his loving wife from the same disease, rendered more fatal by the nervous shock received from his sudden death, March 12, 1888. The death of the unfortunate grandson followed in the spring of 1889. There remain only the sorely afflicted daughter and three grandchildren. His remains rest in the lot chosen by himself in the cemetery at St. Johnsbury, where he had been accustomed to sit by the graves of his first wife and of his beloved daughter Mary. His fine personal presence and cheerful voice will move this bar and bench no more. But may the memory of him influence us to emulate his virtues.

A MEMORIAL SKETCH
OF
HERMAN R. BEARDSLEY.

READ BEFORE THE VERMONT BAR ASSOCIATION, OCT. 21, 1890.

By EDWARD A. SOWLES.

The Hon. HERMAN R. BEARDSLEY, formerly one of the judges of the supreme court of this state, was born in Kent, Connecticut, on the 21st day of July, 1800, and died at St. Albans, Vermont, on the 9th day of March, 1878. His father, Ephraim Beardsley, moved to Grand Isle, Vt., in the early boyhood of his son. While at Grand Isle, he placed the tuition of his son in charge of that eminent divine, the Rev. Asa Lyon of Grand Isle, afterward a member of congress. A more learned and accomplished classical scholar and theologian did not live in those times. Associated with Mr. Beardsley in his preparatory course under "Parson Lyon," as he was familiarly called, was the Hon. Henry Adams, afterward an eminent scholar and lawyer, and a great rival of Mr. Beardsley's at the Franklin county bar for about thirty years. Indeed, this rivalry began at the preparatory school between these two aspirants for future honors, which evinced itself particularly in the translation of a certain passage in Virgil, in which each insisted that his particular rendering was correct, and it was settled by a reference to the Parson. The latter, however, decided that Mr. Adams was correct, and by way of reconciliation and advice, as well as a

salutary rule of life; quoted the Latin maxim, *Suaviter in modo, fortiter in re*, which these two students in after life cherished in their memories, and strove to follow in all their associations with men.

After Mr. Beardsley had completed his preparatory course, about the year 1819, he entered the University of Vermont, from which he retired in consequence of failing health, in his junior year, and he shortly after entered the law office of the late Judge Turner of St. Albans, afterward one of the judges of the supreme court, whose stepdaughter, Abigail S. Webb, Mr. Beardsley afterward married, by whom he had three daughters and one son.

Mr. Beardsley completed his legal studies before admission to the bar in the office of the Hon. Asa Aldis, formerly one of the judges of the supreme court, and the late Hon. John Smith, a leading member of the bar, with whom Mr. Beardsley was intimately associated in the inauguration of railroads in Vermont, the outcome of which was the transition of stage coaches into luxurious palace cars, with all the modern improvements in travel. In all these matters Mr. Beardsley took an active part in legislation, organization and litigation down to the time of his death.

Mr. Beardsley likewise associated himself in the practice of his profession with several different lawyers, among them Judge Hunt, and his brother, Jerome J. Beardsley, afterward a prominent and leading member of the Illinois bar at Rock Island and Chicago.

During Judge Beardsley's extensive practice of over fifty years, he was brought in contact with, and was the peer of, such giants in the law as the Aldises, the Royces, the Smiths, the Burts, the Smalleys, the Adamases, Swift, Stevens, Browns, Turner, Whitmore, Wilson, Edson, White, and others, who for more than half a century adorned, honored and elevated the Franklin county bar, and gave it a prominence and history in Vermont jurisprudence which has never been surpassed.

In 1865, Mr. Beardsley was appointed a judge of the supreme court by Governor Smith, as the successor of Judge Asa Owen Aldis, who resigned to take a consulship under Mr. Lincoln, to Nice in Italy, on account of the failing health of his family. He filled this position with the same marked ability shown at the bar, but it soon became apparent that it was not congenial to his tastes, and he made no effort to secure an election by the legislature. The tame and retiring duties of the judge did not supply and satisfy his taste for the more active and demonstrative engagements of the advocate. To hold the scales of justice and administer the law, was to deprive Judge Beardsley of his fondness for forensic display which he possessed in a remarkable degree. He liked manly discussion, but detested acrimonious encounters in his practice. He loved the law as a science and not as a device. Although he made mistakes—as there are few who do not—still he never failed to acknowledge his wrong and make reparation when fully convinced. Indeed, a lawyer's mistakes are usually public, while a physician "buries his mistakes."

It could never be said of Mr. Beardsley as was facetiously said of Judge Peck, by the lamented Judge Steele, who said that "he was glad he did not know as much law as Judge Peck, as he would not know how to apply it." Judge Beardsley knew the law and had a remarkable facility for applying it.

As an advocate, Judge Beardsley was eminently successful. Endowed by nature with a clear and clarionlike voice, and as clear and concise a rhetoric, he displayed—

An eloquence that charms and burns;
Startles, soothes and wins by turns.

This was especially demonstrated in his defence of J. Randall, who killed his wife and child in Franklin, Vt., about the year 1835. The culprit was brought into court for trial before Judge Phelps. Henry Adams represented the state and Mr. Beardsley the respondent. A strenuous effort was made by the latter to secure a continuance of the case, that medical experts might

be introduced to show the respondent's insanity. The court denied the application and ordered a jury empaneled, and the trial began. At this moment the respondent, in a fit of epilepsy, fell on the floor in front of his counsel. Mr. Beardsley arose and renewed his motion for a continuance and supplemented it by an eloquent appeal to the court, in which he said "you must not, I demand that you shall not, deprive this poor waif of a fair trial for his life." The audience was electrified; the court overcome; a juror was withdrawn and the case continued. Before another term the prisoner died. Currain's defence of Rowin, and Seward's appeal in behalf of the colored man Freeman could not have been more impressive in resisting the waves of public opinion, which sometimes threaten to overthrow the proper administration of justice.

As a politician Judge Beardsley was not a success, as he disliked the methods so commonly employed to secure office. Hence he never held office except when the office sought him, although at one time congressional honors were almost within his grasp.

As a gentleman and companion, he was always affable and courteous in his domestic life, as also in his relations with his associates at the bar. His idea was that "necessity made good lawyers"; and as chairman of the committee on examinations and admissions to the bar, he would frequently speak of the proponents for admission before the court as "candidates for poverty and distinction." He always spoke a cheering word for the indigent but diligent young lawyer struggling for "a habitation and a name." Even when employed on the opposite side of a case, he would frequently make suggestions of lasting benefit to his younger and less experienced associate.

In this respect, as likewise in many others, the writer cheerfully contributes this slight testimonial to a genuine scholar, a brilliant lawyer, a learned judge and an eloquent advocate, by way of recognition and inadequate payment of a lasting debt of gratitude to a true friend.

A MEMORIAL SKETCH
OF
HENDERSON CAMPBELL WILSON.

READ BEFORE THE VERMONT BAR ASSOCIATION,

OCT. 21, 1890.

BY FREDERICK W. BALDWIN.

HENDERSON CAMPBELL WILSON was born at Champlain, N.Y., on the 8th day of June, 1826, the son of Durfee Wilson, a carpenter by trade, an industrious, hard-working man, but a man of limited education and means. While our subject was quite young, the father moved to Colchester, Chittenden county, Vermont. Fanny (Campbell) Wilson, the mother of Henderson C., traced her ancestry to the Campbells of Scotland, from whence her father came, and at an early age settled in Cambridge, Lamoille county, Vermont. Young Wilson early obtained such an education as the public schools at home could give, and from there he went to the academy at Bakersfield. Like many ambitious Vermont boys, he was obliged to teach school to obtain means to go on with his studies. The public school in his own district, as well as those in the neighboring towns of Bakersfield and Fairfield, and other places, were the fields of his labors. He taught school at Colchester in the winter of 1844 and 1845, and at Fairfield in the winter of 1846 and 1847, attending school at Bakersfield and at Burlington spring and



A. C. Milner

fall when he could, during these years. Also while in Bakers field, during this time, he was diligently pursuing the study of the law, every spare moment, in the office of his cousin, the Hon. William C. Wilson, late an associate judge of the supreme court, and was admitted to the bar in Franklin county at its September term, A.D. 1847. Soon after his admission to the bar, October 22, 1847, at the age of twenty-one years, he settled at North Troy in the county of Orleans, where he ever afterward resided and practiced his profession.

At this time North Troy was a small village on the Missisquoi river, in the town of Troy, less than a mile from Canada line and about seven miles from South Troy, the main village of the town, where Samuel Sumner and Norman Boardman, both men of mature years and experience, were in the active practice of the law. In this valley in the county of Orleans were the towns of Troy, Westfield, Lowell and Jay. The shire town of the county was Irasburgh, over the hills fifteen miles away, and no railroad in the county. There was a good water power at this point, and the village gradually grew. In 1872 what is now called the South Eastern Railroad was built through this place, since which time North Troy has been one of the flourishing villages of the county. The locality proved a good one for young Wilson, and he soon found himself actively engaged in professional work; and by close application and hard work he immediately gained his share of the law business of the whole valley, as against his competitors at the South Village, and after a short time he was on one side or the other of every cause of any note coming from that section; and that continued as long as he lived. In the words of another, "It can be said of him that during his forty-three years of active practice in Troy he had never had an attorney's sign upon his office, but had always done a good business, and had never missed a term of court in Orleans county."

He loved his profession and was proud of it. He considered the bar as meant for those who would devote their lives to

assisting the court in administering justice, and his career was a protest against the dangerous tendency there is to use the profession of the law as a means to attain something foreign to it. The writer has often heard him remark, in speaking of some brother attorney who had left the profession for some political position, that it might suit him, but as for himself, nothing pleased him so well as a good large docket in court. As a lawyer he was industrious, earnest and faithful, never tiring, never despairing, adroit, bold and persistent. He was particularly noted for thoroughly preparing his cases for trial; such a thing as asking for a new trial on the ground of "newly discovered evidence" was never known in the practice of Mr. Wilson, for the good reason that every witness who knew any thing favorable to his side of the case was "discovered" before the case was set for trial. In the trial of a cause he was vigorous and energetic, quick to see and apprehend the vital points in his case and the weak side of his adversary, and always ready to take advantage thereof; and being thus equipped he was a hard antagonist to meet. His forte was not the arguing of cases to a jury; in fact I do not think the trial of causes by jury was his favorite way. He rather preferred to try cases before the court, or by a referee, where his careful preparation and thoroughness made him very successful. If he had causes best tried before a jury, he frequently associated himself with such men as Edwards, Dickerman and Young, his part being to introduce the testimony upon his side and cross-examine the opponent's witnesses, wherein Mr. Wilson's power as a lawyer was well displayed. It is his due to here say that Mr. Wilson was no ordinary advocate before a jury; he was direct and practical, never diffusive or ornamental. He went directly to the main points, and presented the leading features of his case with convincing force and power.

Mr. Wilson was often called upon to act as referee in important matters, sent out under rule of court, and always with satisfaction to those concerned and credit to himself. His

powers of mind naturally active and vigorous, united with a cool, clear and discriminating judgment, led him quickly but carefully and considerately to examine all questions which were submitted to his determination.

He was one of the active promoters of the South Eastern Railroad, and was always the attorney of the late Colonel A. B. Foster while manager of that road. He was one of the projectors of the Missisquoi and Clyde River Railroad and was actively engaged in its construction, and from its organization to his decease was a director in that company. In all the public and private enterprises which affected the interests of the community in which he dwelt he was foremost among their promoters and advocates, not discouraged at obstacles which to many seemed insuperable, but combating and overcoming all apparent difficulties by his energy and strength of will. He never rested from his work until the object and purpose sought to be obtained was successfully accomplished.

Mr. Wilson while never having devoted himself to politics, has been repeatedly honored by the confidence of the people of his town, county and state. He was elected state's attorney for Orleans county in 1855 and again in 1860. He was a representative from the town of Troy for the years 1863 and 1864, and senator for Orleans county for two elections, 1872 and 1874. While in the house he was chairman of the important committee on claims, and in the senate was chairman of the judiciary committee. A study of the records of the house and senate during these years shows him to have been a faithful, conscientious legislator, and that he always zealously labored for the advancement of the welfare of his constituents and faithfully represented and promoted the interests of the state.

At the national election in 1888 he was elected one of the presidential electors for the state of Vermont, and was by them selected as the one to carry the vote of Vermont to Washington;

and at the time of his death he was chairman of the board of road commissioners for the county of Orleans.

His business from the first was remunerative, and with his habits of economy and his grand financial ability he was able to accumulate a handsome property for one in this rural section. He had a natural taste for farming, and at his death had put largely of his wealth into some of the finest farms in the Missisquoi valley.

Although Mr. Wilson was not a member of any church, he attended at the Congregational, and always took a great interest in its welfare and in the support and advancement of religious matters, and probably no man who attended at that church did as much to maintain preaching as he. I remember but a few years before he died, being at North Troy and at his residence, when conveying me to the train he took pleasure in taking me by the church, that I might view the extensive repairs that he had charge of and was mainly instrumental in having made.

He was essentially a kind-hearted man. He was kind to his neighbors and cordial, genial and hospitable to his friends and acquaintances. His society was attractive, not only on account of the solidity of his judgment and the breadth of his information, but for his keen appreciation and good power of illustration by appropriate anecdote.

He especially enjoyed the society of his brother lawyers, and when among them was ever ready to tell a good story or crack a good joke, and he lost no opportunity to do this at their expense. He enjoyed sparring with the younger members of the bar, but never carried it to that extent to be offensive; and if any young lawyer was taken by surprise or at a disadvantage in court, no one was more ready than he to offer help and counsel.

Mr. Wilson was married to Mary Ann Porter of Troy, who survives him, on the 22d day of October, 1850, just three years to a day from the time he settled in Troy, and there were born

to them four children, two of whom, a son and daughter, are now living. No man was more faithful to the interests and requirements of his family than Mr. Wilson.

He possessed a strong physical organization, and until about a year before his death enjoyed good health. He was a man of medium height, but quite solid and substantial of body and for some years had been growing quite stout, and for about a year before his death had been troubled with failure of the heart. Notwithstanding this he had been able to attend to his professional work until within two or three days of his death. Only the week before his death he was engaged in a case at Greensboro, as referee, and seemed to be in his usual vigorous condition. He died very suddenly at his residence August 13, 1890, universally mourned by the community.

The action taken by the bar of Orleans county at the September term after his decease, in adopting appropriate resolutions, and the ordering by the court that they be inscribed upon the records of the court, attest the high regard in which he was held by them during life and their keen appreciation of the loss sustained by his sudden death.

WIT AND HUMOR OF THE BAR.

In the *Century Magazine*, closing in October, 1890, Mr. Joseph Jefferson has given the world pleasant reminiscences of some of the great actors and actresses of the world with whom he had been associated during his long and successful career. The great personator of "Rip Van Winkle" has less to say about the tragedians than comedians; and this we suppose comes from the fact that comedy rather than tragedy is the great play of this world. Shakspeare had, no doubt, in mind the poor lawyer when he said —

All the world's a stage,
And all the men and women merely players.

We are all acting our small part in some great comedies. Biographies of great men would leave the impression that their subjects took no part in any play less than the drama, and ignore all incidents of a funny character as unworthy of record.

Each member of the bar knows that we often learn best the true character of our legal brethren by a full and free acquaintance with the so called funny side of their lives.

In court we are all on a kind of dress parade. We there wear our best clothes, and put on our legal airs.

We meet each year reverend and venerable appearing gentlemen, members of our Association, who appear as sober as Spanish dons. We should as soon expect a laugh from "the old man of the mountain" as from them; yet if we lived near them and practiced with them we should no doubt find them the most charming companions, and as full of fun as Mark Twain.

We can tell no little stories of these brethren, whom we seldom meet ; so if the writer of this short paper speaks only of the men of his quiet neighborhood you must not greatly wonder.

As a class, lawyers constitute a strange one :—clannish, prodigal, full of eccentricities — all growing with age.

Colonel S. who recently died in our town was a good example of this sort. When I first knew him he was well past sixty ;—faultlessly dressed, even if a little old fashioned. His clothing was of excellent quality and well fitting : a beautiful waistcoat ; an old fashioned ruffled shirt ; fine boots ; small hands and feet ; a fine ring and breastpin. Like Captain Cuttle, he had one game hand. Whenever in earnest he would wring his crooked hand with his well one. Governor E., the blandest of men, was once hearing, as referee, a case in which the Colonel appeared for one party. The evidence was only partly in ; but the Colonel grew impatient and informed the patient referee that he wanted to argue the case then. Opposing counsel objected, urging that it was not the proper time to do so ; but the Colonel said that he was then in the right spirit, and that he must argue the question then or never ; and he did so, bade good bye to the referee, and never appeared again.

Once the Colonel had with ill success tried a cause at Guild-hall before the late Judge P., and was left by the result in no peaceful state of mind. After the court he invited the Judge to take a ride behind his fine horse. As soon as they had passed into New Hampshire the Colonel said : "We are now in New Hampshire ; you are not now Judge P.?" to which the reply was, "No." "Well, Mr. Poland," remarked the Colonel, "I now want to tell you what a d—d fool you made of yourself in your rulings today" ; and he proceeded to that task with his usual vigor.

About 1866 the same Judge P. came from Washington to try a case against the late Elijah Cleveland and others in a suit on a probate bond the defendants had signed. Judge S. was then

presiding. At the former term the case had been continued, instead of an entry of judgment and a continuance of the trial of breaches. Judge P. made a vigorous effort to have the court change the record of the previous term, but without avail. Out of the court room went Judge P. closely followed by the Colonel. As soon as the door to the court room had closed the Colonel, in his politest tone, said to Judge P.: "Well, Judge, you have left Judge S. now just as I have left you a hundred times — in perfect d——d disgust!" As quick as a flash the Judge remarked: "Colonel, do you know where I can get some good potatoes?"

David H. of Concord was another peculiar man. He always rode in a gig drawn by a large and beautiful bay horse. He was plain spoken, positive and somewhat absent minded. Tradition says he was the great statute lawyer in the eastern part of Vermont.

Once the old gentleman contributed five dollars for the support of a minister with whom he was on excellent terms, and as he did so remarked: "There goes another five dollars to h—l!"

Besides attending to his law practice he carried on a farm, some of the work upon which he did in person. Once he was greatly perplexed while harrowing on new land by his harrow's turning over. The team was put up, the harrow taken to a blacksmith, and a set of teeth put in on the upper side. When he again harrowed he remarked, "Let the confounded thing turn over now."

David, his son, lived with him, and kept a small horse. The harness used by the father upon his large horse was of the old-fashioned breastplate kind and was fastened together. The son used the harness and took it up to fit his smaller horse. He forgot to let the harness out again. The father, not knowing the use the son had made of the article, tried to put it on his horse. It would not go down at the horse's rear. The old

gentleman pulled and tugged and sweat for several moments, but without success. At last he stepped back, gave a deep sigh, and exclaimed in a tone of perplexity: "My Lord! my God!" then pulled off the harness and trudged away on foot several miles.

"Father H." of L., as the New Hampshire bar terms him, married David H.'s daughter, and is as dry as an Irishman. Tall and spare, slow of speech, but not slow to think, he for years has been one of the leaders of the Essex county bar. He is an excellent specimen of the true "Yankee lawyer."

Some years ago he and Mr. R. brought two suits in G. before a justice. Their clients were sisters, and they claimed that an officer had taken a heifer and steer on their father's debt. By a queer mistake Father H. sued to recover for a heifer and Mr. R. for a steer, when in fact the proof was the order should have been reversed. Mr. R. asked to change the name of his animal. A spirited argument followed, and the motion denied. Father H. then said to the court he had no doubt that it had ruled properly, and he then asked to strike out the name of the animal and put in the word yearling; all which was granted.

In the noted divorce case of *Rowell vs. Rowell*, heard at Lancaster some years ago, the eccentric chief justice of New Hampshire took his place in the bar and opened the court by asking the counsel if Mrs. Rowell was in court. She was then sworn, and the chief justice for nearly half a day plied her with questions. He then called the husband, and to the horror of counsel but amusement of spectators repeated his vigorous examination.

Father H. was an interested spectator. Ex-congressman B. took a seat in the judge's chair and watched proceedings. A countryman took a seat near Father H. and grew interested too. Turning to Father H. he asked who that new judge was. The reply was, "Judge B." "How long has he been there?" "Only

a short time," was the prompt answer. "Who in thunder is that lawyer asking questions?" "His name is Doe." "For God's sake! which side is he on?" said the now puzzled countryman.

This was too much for Father H., who that night told the story to the chief justice.

A familiar figure in this and adjoining counties for many years was Mr. B., whose eyes nature had twisted so that no one could tell where he was looking. In 1870 the famous bachelor judge of Vermont held the December term to accommodate the newly elected judge from Caledonia.

The term began early in the month and continued early and late down to the morning before Christmas. Then the judge desired to go home, which was Pavilion Hotel.

Mr. B. had tried several cases during the term, but his efforts at preparation were not such as always to meet the hearty encomiums of the bench. In a petition brought by the town of Kirby against the heirs of an old Mr. and Mrs. Russell for the support of the aged couple, Mr. B. had appeared for petitioner. At a certain stage he unfortunately asked the judge if it would be necessary for him to prove the marriage of these old folks.

The judge's face at once became as red as a turkey cock's. In no gentle tone he replied: "Mr. B., if you will tell me which party has retained me I will then inform you."

In the same trial he had occasion to say to Mr. B.: "Stand back, so the rest may hear you."

The bar were directed to meet the last morning at seven o'clock. The court was on hand promptly and all cases disposed of. Only a few moments before train time Mr. B. strolled into the court room and asked what had been done with a certain case of his. The judge remarked it had already been disposed of. Mr. B. asked *how*. By this time the judge had started for

the door with his bag in one hand and his coat across his arm. The judge turned and said sharply: "Counsel should be in their place. I don't want to get left."

Mr. B. looked beaten, said not a word, and followed with his crooked eyes the burly form of the judge to the door, and just as it disappeared said: "I hope to God he will not get left!"

Mr. Bliss N. Davis is my authority for the following anecdote of Judge Jack Mattocks:—

In a trial at Danville Judge M. was of counsel, and in his argument, to illustrate a certain point, began a beautiful picture of a ship under sail. He forgot the proper nautical terms and seemed for a moment—an unusual occurrence—to be bewildered. Suddenly turning toward his scholarly brother William he said: "Here, Brother Bill; come on board my ship, take command, sail her back into port, and I will promise never to go to sea again as long as I live."

Mr. Thomas Bartlett would startle an audience by an allusion to some ancient thing. He was once arguing a point before a jury. He had occasion to refer to some witnesses who came from the Red Village in Lyndon. These witnesses he desired to discredit, and this was the way he did: "Years ago an angel from tophet was sent out by the chief magnate thereof, with directions to find the meanest place on this earth; to find a spot where there were more liars to the square yard than anywhere else. He flew long and far;—at last hovered for a moment over Lyndon Red Village;—when he at once returned to the place from whence he came, and shouted 'Eureka! Eureka!'"

At another time Mr. Bartlett was an associate with a well known pettifogger—Mr. B.—in a justice trial. A young lawyer by name of D. represented the defendant and made it lively for his two opponents. Mr. B. burst into a perfect fury and started to personally chastise D., who advanced to meet B. B. remarked that "he had spent all the intellect he was going to on such an ignoramus," and that he would try him physically.

Upon this Mr. B. seized him by the shirt exclaiming, "Try him intellectually—try him intellectually, B., and you will be enough for him; physically he will throw you to h—l!"

The following relates to Judge A., who some thirty years ago was a member of our supreme court, and is told in the same language as it was told to me.

Judge A. in the fifties held a term of court at G. Young lawyer D. had just settled in practice there. After five days' engagement in trials the case of *Webster vs. Potter* was reached Saturday. The judge ordered a verdict against young D's client, when the court took a recess until the following Monday. Judge A. then said to D.: "Judge P. boasts that he has been to the four corners of the state. I have visited three and desire to see the fourth." D. replied: "I will be at hotel with a team in thirty minutes; but what will you do if you meet any of my outraged clients?" This was not the only case where the court had ordered verdicts against D's clients.

The two were soon on their way up the beautiful Connecticut, the elder, as he always was, interested in the keen zest with which the younger entered into a discussion of life's plans, and the latter in turn taking in, with keen appetite, suggestions flowing from a long, rich experience. Suddenly the younger said: "Judge A., see there! there's danger ahead! See that man dashing the fruits of the earth in pieces."

On looking up the judge beheld on a little elevation in bold relief, between them and the deepening twilight, D.'s client, Captain Webster, beating pumpkins for his cows.

The judge suggested that they drive quietly by. But D., knowing the nature of his client, suspected that there was something there worth appropriating, so they moved slowly along the road. The judge turned up his overcoat collar to protect himself from the chilly air. "Hullo!" shouted Captain W. "Drive on," whispered the judge. "D., what have you done with my case!" says the captain. "Carried it up," replied D.

"But didn't the judge say you was wrong about the law?" shouted the captain, approaching and then leaning on the fence. "Yes," responded D.; "but this is his first term in this county, and he has not yet got the hang of the business." "Yes," then remarked the captain, "but what does the old cuss mean in treating me so, and you to?" By this time the captain had put one foot on one hub of the wheel, and the judge signalled to D. to drive on. "Oh! the judge means well," said D.; "he has a great many cases, can't look them up in court, and can't know the law as well as we who have done so."

The captain fired up, and thundered out: "I know that; but as plain a case as mine is,—as clearly as you explained it to him,—he ought to understand it. He ain't fit to be a judge; and I told David when I got home, if I had a boy ten years old that was no better piece of property than that judge, I would split him up for kindling wood—only he would be too green!"

In silence the two then drove up the river.

Some years ago, Judge H. B. of L. was arguing a case in the supreme court of New Hampshire. He had a paper he wished to read to the judges, but to decipher it he could not. After many efforts he laid it down, and pulling off his spectacles said he was in the same fix a great scholar once was, who had said he would never leave a stanza of poetry without fully knowing its meaning. By chance he found a passage he could not understand. He inquired for the poet and found he was absent from home. Following him the world over, at last he discovered the poet in a little old dried-up man in some Italian town. The scholar told the poet his dilemma, handed him the printed book, and asked him to explain the meaning of the particular passage. The judge here put on his spectacles, again picked up his unreadable paper, and added: "The poet said to the scholar, 'Young man: when I wrote that passage its meaning was only known to myself and God; at present it is only known to God.'" The judge pulled off his spectacles, laid down his paper, and quit.

APPENDIX.

REPORT OF COMMITTEE ON LEGAL HISTORY AND BIOGRAPHY.

The undersigned report as follows :—

There have died during the year last past, or prior thereto, the following members of the Vermont bar whose names are not recorded as deceased in minutes of this Association.

ADDISON COUNTY.

At Vergennes, Frederick E. Woodbridge. Born at Vergennes on the 29th day of August, 1818; died the 26th day of April, 1888, aged 70 years. For several years a member of congress. A member of this Association.

CALEDONIA COUNTY.

At St. Johnsbury, Andrew Jackson Willard. Born at Lyndon on the 10th day of September, 1815; died at St. Johnsbury on the 31st day of December, 1889. Removed from Lyndon to St. Johnsbury about 1851. State's attorney of Caledonia county in 1866, and a prominent Methodist of the state.

Lyman D. Hathaway, at Hardwick. Born August 29, 1833, and died May 26, 1890, aged 57 years. No honester man was found anywhere. He loved quiet, and to him public office had no special attraction. Probably no member of this Association had a more intimate acquaintance with the decisions of Vermont supreme court than had Mr. Hathaway.

CHITTENDEN COUNTY.

George W. Wales, at Burlington. Born on the 10th day of July, 1855, and died on the 16th day of January, 1890. In his death we have lost one of our keenest intellects.

The sketch of Mr. Wales's life published in the *Green Bag* for May, 1890, is a truthful portrayal of his young and valuable life.

FRANKLIN COUNTY.

Homer E. Hubbell, at Fairfax, May, 1890. Born at Cambridge August 10, 1805. Mr. Hubbell was known but little to this generation, but his office was famous for the talented men it sent into the world. Among them were Judges David A. Smalley, William C. Wilson, and Jasper Rand, Julian H. Dewey, and Hon. Henry L. Shepard, ex-senator from Illinois. For many years he has been sole survivor of first state senate of 1836.

ORLEANS COUNTY.

At North Troy, Henry C. Wilson, August 14, 1890. Born in Champlain, N.Y., June 8, 1826. Town representative; state senator; presidential elector. One of the most genial of gentlemen; of the broadest views, but possessed of great Yankee shrewdness. No member will be more widely missed than Mr. Wilson.

Major Charles O. Brigham. Born at Fitchburg, Mass., December 1, 1837; died at Derby June 24, 1890. This gentleman was a gallant soldier and an upright citizen. He married a Miss Spaulding, a sister of Mrs. Hayden, who was shot by her husband, Edwin C. Hayden. The sad history of this murder is recorded in 51 Vermont, 296.

RUTLAND COUNTY.

No other county has lost in a single year so many distinguished men as has Rutland in the past one.

Hon. John Prout was born November 22, 1815, and died at Rutland August 28, 1890. For a short time he graced the

bench of our supreme court, then went back to the profession he loved so much and there labored to the end. Vermont had no finer legal scholar than Judge Prout. He was a lawyer in the best sense of the word. If it was proper to pray for long life for any person, for no one could such prayers be more freely uttered than for him.

Hon. Walter C. Dunton. Born November 29, 1830; died at Rutland April 23, 1890. He too was for a time a judge of our supreme court, a state senator, etc. For a time he was a partner with ex-judge Veazey, and was an active practitioner up to the date of his death. He had the confidence and respect of every one who knew him.

In Reuben R. Thrall the bar lost its oldest and one of its best known members. In fact, Mr. Thrall may be classed with the late William P. Briggs as the John Doe of our Vermont literature. His first suit was that of *Page vs. R. R. Thrall*, in 2 Vermont, 448, decided in 1830, and the last one *Derby vs. Thrall*, 44 Vermont, 413, decided in 1872. Between these dates the records show no less than twenty cases to which he was a party. Like other men who are often in court, Mr. Thrall usually got the worst of litigation. Born in Rutland in 1797, he died at same place in May, 1890, aged 93 years. He was admitted to the bar in 1819, and was probably the oldest lawyer at his death on the western continent.

WASHINGTON COUNTY.

James N. Johnson, son of James W. and Lydia (Harvey) Johnson was born at Northfield September 4, 1833. He was educated at Northfield and South Woodstock, read law with F. V. Randall, and was admitted to the bar September term, 1854. He began practice in 1856 in the city of Chicago, where he remained about four years, when he returned to Northfield and continued in active practice there until his death. In politics he was a democrat. He married Eloiza, daughter of

Luther S. and Lucy (Nelson) Burnham, of Northfield, April 30, 1858. He has one son surviving, Luther B., who was born in 1869. Mr. Johnson died February 1, 1890.

WINDSOR COUNTY.

Hon. Julius Converse was born December 27, 1799, and died at Woodstock August 15, 1885. He was one of the leaders of the Windsor county bar, many years a member of our general assembly, and for two years governor.

J. K. Polk Chamberlain was born in Pomfret November 23, 1844, and died March 12, 1888.

Charles Hanson Marsh was born at Woodstock May 31, 1847, and died February 26, 1887. He came of a well known and respected family, being a son of Hon. Charles P. Marsh.

No data has been obtained of the following members of Windsor county bar recently deceased :

Hon. John F. Dean, Cavendish ; Luther Adams, Chester ; William M. Pingrey, Weathersfield ; Noah B. Stafford, Hartford.

Hon. Frederick Billings of Woodstock deserves a warm place in the hearts of Vermonters, and a more extended biographical sketch than can be given here.

JOHN H. SENTER,
ELISHA MAY,

Committee on Legal History and Biography.

REPORT OF SPECIAL COMMITTEE ON MESNE AND FINAL PROCESS, ETC.

*To the Members of the
Vermont Bar Association :*

The undersigned, in behalf of a committee of the Association appointed to prepare and present for consideration certain changes in legislation regulating mesne and final process, presents the following, drawn up in the form of bills, to be presented to the legislature, subject to the approval of the Association. The several members of the Association to whom this circular letter is addressed are requested to communicate with the undersigned, for the committee, their views in respect to the measures proposed, with such criticisms and suggestions as may seem to them proper.

DANIEL ROBERTS, Chairman.

Burlington, May 26, 189c.

AN ACT REGULATING MESNE PROCESS.

It is hereby enacted by the General Assembly of the State of Vermont :

SECTION 1. No writ of mesne process shall issue as an attachment against either the property or person of the defendant, unless the plaintiff, his agent or attorney, shall first make his affidavit, to be endorsed upon or attached to the writ, stating, in substance, that the plaintiff has a just claim against the defendant upon which he expects to recover in the action to be commenced, and specifying the nature of such claim and the amount due thereon, as near as may be, or claimed to be justly recoverable as damages.

SEC. 2. The court before which any civil suit is pending may at any time before judgment therein, upon application of any defendant who has been arrested or whose property has been attached, upon due notice given

and for good cause shown, reduce the amount of the bail taken or required, or the amount of the attachment, by an order to be endorsed on the writ, or entered upon the record; but the writ shall not abate by reason thereof, nor shall any then existing bail or attachment be thereby discharged except to the extent of such order.

SEC. 3. Where the writ has been served as a summons only, the court before which the suit is pending may at any time before judgment make an order and issue process of attachment in the suit upon like evidence as is required for the issuing of such process originally; which attachment shall be subject to such modification and control by the court as is provided in Section 2 of this act.

AN ACT PROVIDING REMEDIES SUPPLEMENTAL TO EXECUTION.

It is hereby enacted by the General Assembly of the State of Vermont :

SECTION 1. After the issuing of execution, any person indebted to the judgment debtor, where the indebtedness is of such character as to be subject to attachment by trustee process, may pay to the officer holding the execution for collection the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the officer's receipt therefor shall be a sufficient discharge for the amount so paid.

SEC. 2. Whenever an execution shall be duly returned unsatisfied, in whole or in part, by reason that no goods, chattels or estate of the debtor could be found whereof to levy such execution, or to make further levy thereof, the judgment creditor may apply by petition to the court of insolvency for the district in which the judgment debtor resides for redress; and such application shall operate as a waiver of any right to arrest the body of the debtor on the execution. The court shall thereupon make an order, to be served upon the debtor, requiring him to appear before the court at a time and place specified to answer and make disclosure of any property, money or thing in action belonging to him, or due or held in trust for him, and on neglect or refusal of the debtor to appear in obedience to such order, the court may issue a warrant to arrest the body of the debtor to secure his appearance.

SEC. 3. Instead of making an order requiring the attendance of the judgment debtor, as above provided, the court, upon proof by affidavit to its satisfaction that there is danger of the debtor's leaving the State or concealing himself and that there is reason to believe that he has property

which he unjustly refuses to apply toward the satisfaction of such execution, may issue a warrant requiring the officer to whom it is directed to arrest such debtor and have him before said court to answer concerning his property.

SEC. 4. Upon his appearing, or being brought before the court, such debtor may be examined on oath, and witnesses may be required to appear and testify on the part of either party in the same manner as in the trial of an issue. The court may, in its discretion, appoint a referee to take and report such examination, and require the debtor and witnesses, or any of them, to attend and be examined before him. No person shall on such examination be excused from answering any question on the ground that his examination or answer will tend to expose him to a prosecution for a crime or penalty, but his answer shall not be used as evidence against him in any criminal action or proceeding.

SEC. 5. If it shall appear upon or pending any such examination, that there is danger of the debtor's leaving the State, and that he has property which he has unjustly refused to have applied upon such execution, he may be ordered by the court to enter into a bond or recognizance, with sufficient surety, that he will from time to time attend before the court as it shall direct, and that he will not during the pendency of the proceedings dispose of any of his property not exempt from attachment or execution. In default of entering into such undertaking, he may be committed to jail by warrant of the court, as for a contempt.

SEC. 6. Said court may order any property of such debtor in the hands of himself or of any other person, or due to such debtor, not exempt from execution, to be disposed of and applied upon the execution, and may require of such debtor any such written transfer or assignment as may be necessary for this purpose, and may, when necessary, appoint a receiver to receive, collect and dispose of such property and dues.

SEC. 7. If any person, party or witness shall disobey any order of the court or referee, he may be punished by the court as for a contempt; but in case of commitment to jail under this chapter the person committed may, in case of inability to perform the act required or to endure his imprisonment, be discharged by the court on such terms as may be just.

SEC. 8. Said court may allow to the judgment creditor, or to any party so examined, whether a party to the action or not, witness fees and other proper costs, as are taxable in a justice's court, including the fees of the judge and register for like services provided in Section 1884 of the Revised Laws, and may require their payment by order.

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